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IN THE

Supreme Court of the United States

October Term, 1958

No.

DAISY BATES,

Petitioner,

v.

CITY OF LITTLE ROCK,

Respondent.

BIRDIE WILLIAMS,

Petitioner,

v.

CITY OF NORTH LITTLE ROCK,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Arkansas entered in the above-entitled cause on December 22, 1958.

Opinions Below

The opinion of the Supreme Court of the State of Arkansas is not reported but is printed in the Appendix *infra* at page 11. Involved herein are the convictions of petitioners, Mrs. Daisy Bates and Mrs. Birdie Williams, for violation of ordinances of the Cities of Little Rock and North Little Rock, respectively, amending existing municipal privilege tax ordinances so as to require that the names and addresses of the members of the branches of the National Association for the Advancement of Colored People located in each municipality be filed with the City Council. Demand was made upon each of petitioners, as custodian of the records in question, for the membership lists, and upon their refusal to comply, these convictions followed.

Jurisdiction

The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257(3). The judgment of the Supreme Court of the State of Arkansas was entered on December 22, 1958, with Judges Holt and Smith dissenting (R. 450). Petition for rehearing was denied on January 19, 1959 and the mandate stayed pending the filing and disposition of this petition (R. 454).

Question Presented

Whether the occupational privilege tax ordinance here in issue, which require disclosure to municipal officers and availability for public inspection of the names and addresses of the members of and contributors to the National Association for the Advancement of Colored People and pursuant to which petitioners were convicted and sentenced for their refusal to comply, invade the right of privacy and of freedom of speech and association protected by the Fourteenth Amendment to the Constitution of the United States?

Ordinance Involved

Ordinance No. 10,638, enacted by the Little Rock City Council provides as follows:

> An Ordinance Requiring Certain Organizations Functioning or Operating within the City of Little Rock, Arkansas to List Certain Information with the City Clerk; and for Other Purposes.

Whereas, it has been found and determined that certain organizations within the City of Little Rock, Arkansas, have been claiming immunity from the terms of Ordinance No. 7444, as amended, governing the payment of occupation licenses levied for the privilege of doing business within the city, upon the premise that such organizations are benevolent, charitable, mutual benefit, fraternal or non-profit, and Whereas, many such organizations claiming the occupation license exemption are mere subterfuges for businesses being operated for profit which are subject to the occupation license ordinance; Now Therefore, Be It Ordained By The City Council of the City of Little Rock, Arkansas:

Section 1. The word "organization" as used herein means any group of individuals, whether incorporated or unincorporated.

Section 2. Any organization operating or functioning within the City of Little Rock, including but not limited to civic, fraternal, political, mutual benefit, legal, medical, trade, or other organization, upon the request of the Mayor, Alderman, Member of the Board of Directors, City Clerk, City Collector, or City Attorney, shall list with the City Clerk the following information within 15 days after such request is submitted:

A. The official name of the organization.

B. The office, place of business, headquarters or usual meeting place of such organization.

C. The officers, agents, servants, employees or representatives of such organization, and the salaries paid to them.

D. The purpose or purposes of such organization.

E. A financial statement of such organization, including dues, fees, assessments and or contributions paid, by whom paid, and the date thereof, together with the statement reflecting the disposition of such sums, to whom and when paid, together with the total net income of such organization.

F. An affidavit by the president or other officiating officer of the organization stating whether the organization is subordinate to a parent organization, and if so, the name of the parent organization.

SECTION 3. This ordinance shall be cumulative to other ordinances heretofore passed by the City with reference to occupation licenses and the collection thereof.

SECTION 4. All information obtained pursuant to this ordinance shall be deemed public and subject to the inspection of any interested party, at all reasonable business hours.

SECTION 5. Any section or part of this ordinance declared to be unconstitutional or void shall not affect the remaining sections of the ordinance, and to this end the sections or subsections hereof are declared to be severable.

SECTION 6. Any person or organization who shall violate the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than $50.00 nor more than $250.00, and each day of violation shall constitute a separate offense. The City Council in the enforcement of this ordinance shall have the power to seek injunctive relief.

SECTION 7. It has been found and determined by the City Council that certain organizations operating within the City of Little Rock have failed to comply with the terms of Ordinance No. 7444, as amended, governing the payment of occupation licenses, and as a result thereof, needed revenue is being lost, and the enactment of this ordinance will provide for more efficient administration of such ordinance. Therefore, an emergency is declared to exist, and this ordinance being necessary for the preservation of the public peace, health, and safety, shall take effect and be in force from and after its passage and approval.

PASSED: October 14, 1957

APPROVED:

WOODROW W. MANN
Mayor

ATTEST:

W. C. WARE
City Clerk

Ordinance 2683 of North Little Rock is identical in terms to the ordinance set out above. It amends the privilege tax ordinance of North Little Rock.

Statement

These cases were tried separately, but since they involve the same constitutional and legal issue, they were consolidated in the Supreme Court of Arkansas.

Petitioner, Mrs. Daisy Bates, was notified pursuant to Ordinance No. 10,368 to furnish information to the City Council of Little Rock concerning the Little Rock Branch of the National Association for the Advancement of Colored People, including the names of its members. On December 2, 1957, J. C. Crenshaw, as President of the Little Rock NAACP Branch, wrote the City Clerk supplying him with (a) the official name of the local organization; (b) in-

formation as to its regular meeting place; (c) the names of its officers, indicating that all were unsalaried; (d) advising him that the Branch was an affiliate of a national organization which was seeking to secure rights guaranteed by the Constitution of the United States for American Negroes, quoting from the charter of articles of incorporation the purpose of the organization; (e) the financial status of the organization from January 1, 1957, to December 1, 1957; and (f) an affidavit by Mr. Crenshaw as required by the ordinance. Mr. Crenshaw refused to disclose the names of members of and contributors to the NAACP on the ground that the climate of public opinion in Arkansas was adverse to the Association and that such disclosure might lead to harassment, economic reprisals and physical harm against said members and contributors, and that the City was without authority, under the Constitution and laws of the United States, to demand the names of members of and contributors to the NAACP (R. 51-55). For the failure of the organization to comply with the ordinance by furnishing the names and addresses demanded, Mrs. Bates was convicted and fined $100 in the municipal court of Little Rock (R. 1). On appeal she was tried *de novo*, convicted and fined $25 in the Circuit Court of Pulaski County (R. 7). Testimony at her trial showed that, since passage of the ordinance, it had been more difficult to secure contributions and memberships in the NAACP (R. 11-25). The sponsor of the ordinance testified that the ordinance was designed to bring in more revenue (R. 44), and that its disclosure requirements would help the City Council in determining whether any member of a firm seeking a beer or liquor license was guilty of a gambling or liquor violation (R. 45-46).

North Little Rock enacted a similar ordinance on October 14, 1957. On December 4th, upon demand of city authorities, Mrs. Williams supplied all information requested as to name, meeting places, name of officers, national affiliation, purpose and affidavit but refused to give

the names of the members of the North Little Rock NAACP Branch, alleging that the state was without power, under the Constitution and laws of the United States, to require the information sought (R. 380-383). On December 10, Mrs. Williams was informed by the City Clerk that she must furnish the names and addresses of the members of the Branch, and she was instructed to supply this information not later than December 18, 1957 (R. 387). Because of the failure to furnish the information demanded, petitioner was convicted and fined $25 in the municipal court of North Little Rock (R. 364). She appealed and was tried *de novo* in the Circuit Court of Pulaski County and there convicted and fined $25 for this offense (R. 369). At the hearing in the Pulaski County Circuit Court, the testimony showed that the NAACP's aims and purposes were to break down racial barriers and promote equal rights for colored citizens; that the NAACP seeks to better education for Negro children and lends help to people unable to hire lawyers to fight for their constitutional rights; that petitioner, Mrs. Williams, had lived in North Little Rock for fifty-three years, had been a member of the NAACP for eleven years, and President of the North Little Rock Branch since 1948; that since the passage of the ordinance petitioner has not been as successful as before in securing NAACP memberships and contributions (R. 412); that since her controversy with municipal officers over compliance with the ordinance, she had been harassed by telephone calls and threatening letters (R. 414). The sponsor of the ordinance testified that the City Council wanted to know what went on in the NAACP (R. 396).

Reasons for Allowance of the Writ

The decision of the Supreme Court of Arkansas in this cause is in direct conflict with *National Association for the Advancement of Colored People* v. *Alabama*, 357 U. S. 449, and at war with the underlying rationale of decisions of

this Court charting the scope and reach of constitutional guarantees of freedom of speech and association. See *Sweezy v. New Hampshire*, 354 U. S. 234; *American Communications Assn. v. Douds*, 339 U. S. 382, 402. In *National Association for the Advancement of Colored People v. Alabama, supra*, the Court held that compelled disclosure to state officials of the names and addresses of members of the NAACP in Alabama constituted an unconstitutional restraint upon the members' right to freedom of association.

The Supreme Court of Arkansas seeks to distinguish that holding away on the basis that here the disclosure sought relates to a determination of a tax status. Thus, it is argued the overriding interest justifying the governmental restraint, absent in the *Alabama* case, is here supplied.

This conclusion, it is respectfully submitted, is not supported in the record.

Ordinance No. 10,638 (R. 58, 282) is, as stated *supra*, an amendment to the Little Rock privilege tax ordinance No. 7444 (R. 64). This ordinance has been amended many times, but up to now the ordinance and its amendments applied specifically and solely to listed business occupations (R. 106, 112, 114, 117, 119, 121, 123, 128, 130, 132, 134, 136, 138, 142, 144, 146, 148, 154, 158, 161, 163, 167, 169, 171, 173, 177, 178, 179, 188, 191, 194, 199, 205, 207, 211, 220, 225, 251, 255, 256, 262, 264, 266, 268, 270, 276). Ordinance No. 7809 (R. 132), a previous amendment to No. 7444, exempted from payment of privilege tax required of other general commercial enterprises such charitable organizations engaged in the business of manufacturing, selling and other lines of endeavor in order to raise funds for charitable purposes. The occupation license tax ordinance of North Little Rock and its amendments apply similarly to specified business occupations.

There is no evidence that either the Little Rock or North Little Rock NAACP Branches are engaged in any

of the occupations subject to a privilege or occupation license tax. Nor is there any showing in this record that either Branch has ever been called upon to pay such a tax in either municipality or sought exemption therefrom. The fact is the activities of the NAACP Branches are not covered by these privilege tax ordinances or their amendments, and no demand for any tax has been made or even contemplated except as a device to secure and publicize the names and addresses of residents of Little Rock and North Little Rock who belong to the NAACP.

While both ordinances recite that "many * * * organizations claiming the occupation license exemption are mere subterfuges for businesses being operated for profit which are subject to the occupation license ordinance", the City Councils of Little Rock and North Little Rock made no demand on petitioners for payment of occupation license tax, made no inquiry designed to determine whether the NAACP branches in question were engaged in any business activity which would be subject to the tax, but merely requested the names of members of the NAACP.

The constitutional claims at issue in these cases are basic and fundamental. In recogniton of this fact, this Court has sought to make the constitutional guarantees of freedom of speech and association realistic safeguards to individual freedom. Thus, the meaning, import and reach of these constitutional provisions have varied to meet the needs of our society. See *Sweezy* v. *New Hampshire, supra; Burstyn* v. *Wilson*, 343 U. S. 495. Those guarantees are not static *pro forma* legalisms but dynamic and living bulwarks to the maintenance of individual freedom in our society. A subordinating state interest and the compelling justification to warrant restraint of the freedoms involved here must be real and substantial not similated. See *United States* v. *Watkins*, 354 U. S. 178, 198; *National Association for the Advancement of Colored People* v. *Alabama, supra.*

Moreover, there is no substantial relation between the purpose which the ordinance seeks to achieve—payment of

occupation license taxes by "benevolent, charitable, mutual benefit, fraternal or non-profit organizations claiming tax exemption but engaged in business for profit subject to tax"—and the requirement that names and addresses of members of and contributors to the local NAACP organizations in Little Rock and North Little Rock be given to city officials and become subject to inspection by the public. The reasons which led the Court to hold that compelled disclosure of the names and addresses of NAACP members in Alabama was an unconstitutional restraint on individual freedom, apply with equal vigor here.

CONCLUSION

Wherefore, for the reasons hereinabove stated, it is respectfully submitted that this petition should be granted and petitioners' convictions for violating the ordinances in question reversed.

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FRANK D. REEVES,
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Appendix

Opinion of Supreme Court of Arkansas, Filed December 22, 1958

ED. F. MCFADDIN, *Associate Justice*

The issues on these appeals is the constitutionality of the so-called "Bennett Ordinance", which was enacted by the City of Little Rock, and also by the City of North Little Rock. Appellant Bates was fined $25.00 for violation of the Little Rock ordinance; and appellant Williams was fined $25.00 for violation of the North Little Rock ordinance. There were separate appeals; but the cases are disposed of in this single opinion since constitutionality is the point at issue in each case, and the claims and defenses of each appellant are the same.

On October 14, 1957, the City of Little Rock [1] adopted its Ordinance No. 10638 (here under attack), reading in its entirety as follows:

> "AN ORDINANCE REQUIRING CERTAIN ORGANIZATIONS FUNCTIONING OR OPERATING WITHIN THE CITY OF LITTLE ROCK, ARKANSAS TO LIST CERTAIN INFORMATION WITH THE CITY CLERK; AND FOR OTHER PURPOSES.
>
> 'WHEREAS, it has been found and determined that certain organizations within the City of Little Rock, Arkansas, have been claiming immunity from the terms of Ordinance No. 7444, as amended, governing the payment of occupation licenses levied for the privilege of doing business within the city, upon

[1] About the same time the City of North Little Rock adopted its Ordinance No. 2683; and the Little Rock ordinance and the North Little Rock ordinance are in all substantial respects entirely similar.

the premise that such organizations are benevolent, charitable, mutual benefit, fraternal, or non-profit, and

"Whereas, many such organizations claiming the occupation license exemption are mere subterfuges for businesses being operated for profit which are subject to the occupation license ordinance;

"Now, Therefore, Be It Ordained By The City Council of The City of Little Rock, Arkansas:

"Section 1. The word 'organization' as used herein means any group of individuals, whether incorporated or unincorporated.

"Section 2. Any organization operating or functioning within the City of Little Rock, including but not limited to civic, fraternal, political, mutual benefit, legal, medical, trade, or other organization, upon the request of the Mayor, Alderman, Member of the Board of Directors, City Clerk, City Collector, or City Attorney, shall list with the City Clerk the following information within 15 days after such request is submitted:

A. The official name of the organization.

B. The office, place of business, headquarters or usual meeting place of such organization.

C. The officers, agents, servants, employees or representatives of such organization, and the salaries paid to them.

D. The purpose or purposes of such organization.

E. A financial statement of such organization, including dues, fees, assessments and/or contributions paid, by whom paid, and the date thereof, together with the statement reflecting the dispo-

sition of such sums, to whom and when paid, together with the total net income of such organization.

F. An affidavit by the president or other officiating officer of the organization stating whether the organization is subordinate to a parent organization, and if so, the name of the parent organization.

"SECTION 3. This ordinance shall be cumulative to other ordinances heretofore passed by the City with reference to occupation licenses and the collection thereof.

"SECTION 4. All information obtained pursuant to this ordinance shall be deemed public and subject to the inspection of any interested party at all reasonable business hours.

"SECTION 5. Any section or part of this ordinance declared to be unconstitutional or void shall not affect the remaining sections of the ordinance, and to this end the sections, or subsections hereof are declared to be severable.

"SECTION 6. Any person or organization who shall violate the provisions of this ordinance, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than $50.00 nor more than $250.00, and each day of violation shall constitute a separate offense. The City Council in the enforcement of this ordinance shall have the power to seek injunctive relief.

"SECTION 7. It has been found and determined by the City Council that certain organizations operating within the City of Little Rock have failed to comply with the terms of Ordinance No. 7444, as

amended, governing the payment of occupation licenses, and as a result thereof, needed revenue is being lost, and the enactment of this ordinance will provide for more efficient administration of such ordinance. Therefore, an emergency is declared to exist, and this ordinance being necessary for the preservation of the public peace, health, and safety, shall take effect and be in force from and after its passage and approval."

Daisy Bates, a resident of Little Rock, is the State President of the National Association for the Advancement of Colored People (hereinafter referred to by the letters "NAACP"); and Birdie Williams, a resident of North Little Rock, is President of the North Little Rock Branch of the NAACP. Daisy Bates was notified to comply with the Little Rock ordinance, and Birdie Williams was notified to comply with the North Little Rock ordinance. Each furnished all the information required by the ordinance except that part of Section E, which requires that there be furnished: "A financial statement of such organization, including dues, fees, assessments, and or contributions paid, by whom paid, and the date thereof, together with the statement reflecting the disposition of such sums, to whom and when paid, together with the total net income of such organization". In refusing to furnish the information required by Section E, Daisy Bates (by her attorney) advised the City of Little Rock:

"E. The financial statement is as follows:

January 1, 1957 to December 1, 1957

Total receipts from membership and contributors	$1,791.55
Total expenditures	1,491.46
Balance on Hand	$ 300.09

"F. I am attaching my affidavit as president indicating that we are a Branch of the National Association for the Advancement of Colored People, a New York Corporation.

"We cannot give you any information with respect to the names and addresses of our members and contributors or any information which may lead to the ascertainment of such information. We base this refusal on the anti-NAACP climate in this State. It is our good faith and belief that the public disclosure of the names of our members and contributors might lead to their harassment, economic reprisals, and even bodily harm. Moreover, even aside from that possibility, we have been advised by our counsel, and we do so believe that the City has no right under the Constitution and laws of the United States, and under the Constitution and laws of the State of Arkansas to demand the names and addresses of our members and contributors. We assert on behalf of the organization and its members the right to contribute to the NAACP and to seek under its aegis to accomplish the aims and purposes herein described free from any restraints or interference from City or State officials. In addition we assert the right of our members and contributors to participate in the activities of NAACP anonymously, a right which has been recognized as the basic right of every American citizen since the founding of this country.

"I am enclosing herein a copy of the Constitution of the National Association for the Advancement of Colored People, and the Constitution and By-Laws for Branches of the National Association for the Advancement of Colored People."

A similar refusal for similar reasons was made by Birdie Williams, concerning the North Little Rock request. For refusal to furnish the requested information each appellant was fined $25.00 by the Circuit Court; and each in prosecuting her appeal to this Court raises *this Federal question: the ordinance involved—insofar as it requires the names and addresses of the members of and contributors to, the local branch of the NAACP*, is an invasion of the rights guaranteed by the amendments to the Constitution of the United States.[2] All the other points urged blend into the one just stated.

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[2] To support the contentions for immunity from furnishing the requested information appellants stated in the lower Court and reiterate here: ". . . that Ordinance 10,638 is an unjustified interference with defendant's rights of freedom of speech and assembly as secured and protected by the Constitution of the State of Arkansas and by the Constitution of the United States of America—namely, the First Amendment as assimilated in the Fourteenth Amendment of the Federal Constitution. It is the contention of the defendant that the City has not shown that there is a compelling reason or a justifiable cause for demanding the contributors' list to the defendant in this case. The defendant would like to cite two United States Supreme Court cases wherein the Supreme Court held that the request of membership lists and contributors' lists was a direct violation of this fundamental constitutional right—namely, freedom of speech. The case is *Wieman* v. *Updegraff*, 344 U. S. 183, and there the court said that the right to assemble freely, to join an organization and to participate in its activities is one of the protected rights guaranteed under the Constitution. In *Watkins* v. *U. S.*, the Chief Justice of the United States wrote: 'There is no general authority to expose the private rights of an individual without justification'. In *Sweezy* v. *New Hampshire*, the Court said: 'We do not now conceive of any circumstance wherein a State interest would justify an infringement upon these fields—freedom of speech and freedom of assembly'. It is our contention that the City of Little Rock has not shown that there is a compelling reason or a justifiable cause for requiring the defendant to produce the names of its members and the names of its contributors."

The appellants have cited and discussed, *inter alia*: *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 81 L. Ed. 893, —— S. Ct. ——; *Pierce* v. *Society of Sisters*, 268 U. S. 510, 69 L. Ed. 1070, —— S. Ct. ——; *Sweezy* v. *New Hampshire*, 354 U. S. 234, 1 L. Ed. 2d 1311, 77 S. Ct. 1203; *Grosjean* v. *American Press Co.*, 297 U. S. 233, 80 L. Ed. 660, —— S. Ct. ——; *Bridges* v. *Calif.*, 314 U. S. 252, 86 L. Ed. 192, —— S. Ct. ——; *Pennekamp* v. *Florida*, 328 U. S. 331, 90 L. Ed. 1295, —— S. Ct. ——; *National Broadcasting Co.* v. *U. S.*, 319 U. S. 190, 87 L. Ed. 1344, —— S. Ct. ——; *Burstyn* v. *Wilson*, 343 U. S. 495, 96 L. Ed. 1098, 72 S. Ct. 777; *DeJonge* v. *Oregon*, 299 U. S. 353, 81 L. Ed. 278, 57 S. Ct. 255; *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123, 95 L. Ed. 817, ——S. Ct. ——; *Thornhill* v. *Alabama*, 310 U. S. 88, 84 L. Ed. 1093, ——S. Ct. ——; *NAACP* v. *Patty*, 159 F. Supp. 503 (E. D. Va. 1958); and *American Communications Assn.* v. *Douds*, 339 U. S. 382, 94 L. Ed. 925, —— S. Ct. ——. Also in the oral argument before this Court appellants laid great stress on the case of *NAACP* v. *Alabama*, 357 U. S. (Adv. op.) 449, 2 L. Ed. 1488, 78 S. Ct. ——, which was decided after the filing of appellant's brief in this Court. It was claimed that *NAACP* v. *Alabama* was conclusive against the validity of the ordinances here challenged.

It would unduly extend this opinion to review each of the above cases or those cited by appellees. For purposes of this opinion we by-pass the point urged by the Cities—that anonymity is a personal defense and can be claimed only by the organization itself and not by one for it—and we proceed to state our conclusions on the claims that the appellants have made:

I. The primary purpose of each of the ordinances here involved is to obtain revenue for the Cities, and the obtain-

ing of the membership list and the listing of contributors is merely to aid in determining the matter of tax status. The NAACP is not being required to furnish any information other than that which is required of all other organizations seeking immunity from the payment of an occupation tax. The record here shows that the information required by the ordinances involved was required *of all organizations claiming* tax exemption; and the information was furnished by all of the organizations except the NAACP.

In Arkansas, municipalities are creatures of the State and have the powers which the State gives them. (*Eagle* v. *Beard*, 33 Ark. 497; *City of Hot Springs* v. *Gray*, 215 Ark. 243, 219 S. W. 2d 930.) By Act No. 294 of 1937 (now found in § 19-4601 *et seq.* Ark. Stats.) the Arkansas Legislature authorized municipalities to enact ordinances levying an occupation tax. This was a revenue measure. In *Talley* v. *Blytheville*, 204 Ark. 745, 164 S. W. 2d 900, we held that this Act of 1937 was authority for cities to enact occupation tax ordinances as revenue producing measures. Our subsequent cases have followed that holding. In 1947 the City of Little Rock passed its ordinance No. 7444, captioned, "An Ordinance Establishing an Annual Privilege License Tax for Various Businesses, Occupations, and Professions within the City of Little Rock Providing for the Amount Thereof. . . ." This ordinance has been amended numerous times by changing the amount to be charged various businesses and professions and adding other businesses and professions as subjects of taxation.

On November 22, 1948 the City of Little Rock passed its Ordinance No. 7809, entitled, "An Ordinance Relieving Charitable Institutions from the payment of Privilege Taxes to the City of Little Rock, Amending Ordinance No.

7444, and For Other Purposes".[3] Thus, by the Ordinance No. 7809, certain charitable or non-profit organizations became exempt from the privilege tax, even though such organization engaged in some kind of business. Such was the status of the law when, on October 14, 1957, the City of Little Rock enacted its Ordinance No. 10638 first copied herein. The City had reason to believe that some of the organizations, who were claiming immunity under Ordinance No. 7809, were not really charitable or non-profit organizations. The City wanted to ascertain what was being done by these organizations claiming exemptions; and so the City passed its ordinance requiring such organiza-

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[3] The entire text of this Ordinance is as follows:

"WHEREAS, There are certain charitable institutions in the City of Little Rock which engage in the business of manufacturing, and selling, or other lines of endeavor in order to raise funds for charitable purposes such as the assistance of the needy, and the care and education of the crippled and the blind, and

"WHEREAS, These institutions are performing in an unselfish manner a service to the community and are rendering untold aid and comfort to persons who are physically handicapped, and

"WHEREAS, It is believed to be in the best interest of the City and the people of the City of Little Rock to foster and promote such activity on the part of these institutions,

"NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LITTLE ROCK, ARKANSAS

"SECTION 1. Each charitable, eleemosynary, non-profit organization whose purpose is to assist the needy and bring care, training and comfort to the physically handicapped, is hereby exempt from the payment of a privilege tax for the privilege of carrying on such business or occupation within the City of Little Rock.

"SECTION 2. Ordinance No. 7444 is hereby amended to conform to the provisions of this ordinance.

"SECTION 3. All ordinances and parts of ordinances in conflict herewith are hereby repealed."

tion claiming immunity from occupation tax to furnish the City certain information.[4]

The NAACP is not being required to furnish any information other than is furnished by all other organizations claiming immunity from taxation. Furnishing of membership lists of non-profit organizations in Arkansas, as a basis of being determined a non-profit organization, has been the rule in Arkansas since 1875. Act No. 51 of 1875 (as now found in § 64-1301 Ark. Stats.) provides for the incorporation of a non-profit organization, and Section 2 of that Act (as now found in § 64-1302 Ark. Stats.) says:

> "Any association of persons desirous of becoming incorporated, under the provisions of this act, shall file with the Clerk of the Circuit Court and Recorder for the proper county a copy of their constitution or articles of association, *and a list of all the members,* together with a petition to said court for a certificate of incorporation under the provisions of this act." (Emphasis supplied.)

So it is nothing new to require a non-profit organization to furnish a list of all of the members.[5] The same rule that applies to such organizations seeking corporate status is sought here to be applied to such organizations that seek privilege tax exemptions. The record shows that the rule is being uniformly applied to all organizations.

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[4] Section 7 of Art. 5 of the Constitution and By-Laws for Branches of the NAACP says that the local branches shall remit, ". . . the net proceeds of each entertainment or fund raising effort by a Branch shall be divided equally between the Branch and the National Office. . . ." When we consider that shows and amusement places and other forms of entertainment are taxable under the occupation tax ordinance, certainly the City would have some right to ascertain who was belonging to the NAACP and who was making contributions to it, because it was claiming an immunity and yet sending part of its money for some other use outside of the State.

[5] In 8 Ark. Law Review 110 there is an interesting case note entitled: "Illegal activities by non-profit corporations."

Requiring the furnishing of information to the taxing power is not an unconstitutional invasion of the freedoms guaranteed. A taxpayer is required to file an income tax return giving the names of the sources of revenue (as, for instance, the name of the corporation and the amount of the dividend received from it); yet all this has been held to be within the power of the Sovereign. See *Hubbard* v. *Mellon*, 5 Fed. 2d 764. Furthermore, the United States Supreme Court, in *U. S.* v. *Harris*, 347 U. S. 612, 98 L. Ed. 989, 74 S. Ct. 808, upheld a law which required the furnishing of the *names of contributors* and *amounts* paid by each to any person engaged in seeking to obtain legislation. So the rationale of the holdings seems to be: when the required information is a mere incident to a permissible legal result, then the information should be furnished. That is the situation in the case at bar; and we find nothing in *Speiser* v. *Randall*, —— U. S. ——, 2 L. Ed. 1460, 78 S. Ct. ——, or in *First Unitarian Church* v. *Los Angeles*, —— U. S. ——, 2 L. Ed. 1484, 78 S. Ct. ——, which affects the conclusion here reached.

II. The claim that it may hurt the prospects of the NAACP to furnish to the City its membership list and the names of the contributors, does not make the ordinance unconstitutional. The Constitutional Amendments do not guarantee anonymity at all events. If NAACP wants tax immunity, it should comply with the ordinance. It cannot have immunity from taxation without complying with the ordinance. This is but an application of the old statement that one cannot both eat his cake and keep it. The case of *NAACP* v. *Alabama*, 357 U. S. ——, 2 L. Ed. 2d 1488, affords the appellant no protection in this case. In the *Alabama* case the prime purpose of the procedure instituted by the Attorney General of Alabama was to obtain information whereby Alabama could force the NAACP out of the State. So the Supreme Court of the United States

held that NAACP was not required to disclose against itself. In the case at bar, the purpose of the ordinance is to determine the tax status of one seeking to claim immunity from occupation tax. The ultimate aim in *NAACP* v. *Alabama* was to stop the activities of NAACP; but in the case at bar, the disclosure of NAACP's list of members and contributors is a mere incident to see if legal taxation is being evaded. The ordinance here under attack does not single out NAACP and require information of it only: rather, the ordinance requires information of all organizations seeking exemption from privilege tax. Other organizations have complied: why should this one have immunity as though it were a favored child?

The United States Supreme Court has quite recently recognized that a law applicable to all persons is valid, even when attacked by those who disliked the law involved. In the case of *Shuttlesworth* v. *Birmingham Board of Education*, 162 Fed. Supp. 372, four Negro children sought to test the constitutionality of the Alabama School Placement Law and to enjoin the City Board of Education from enforcing the law. The three-Judge Court, in an opinion by Circuit Judge Rives, held that the Alabama School Placement Law furnished legal machinery for an orderly administration of the public schools by admission of qualified pupils upon a basis of individual merit, without regard to their race or color, and that the law was not unconstitutional on its face. The case was appealed to the Supreme Court of the United States and that tribunal affirmed the three-Judge Court in a per curiam order of November 24, 1958, saying: "The motion to affirm is granted and the judgment is affirmed upon the limited grounds on which the District Court rested its decision." When we study the decision of the District Court, we see that the Alabama School Placement Law was upheld because there was no showing that it was not being uniformly administered.

The same thing is true in each of the ordinances here under attack: *there is nothing in the record before us to show that these ordinances were enacted for any purpose other than those stated in the ordinances;* and there is no showing that the ordinances are being enforced other than uniformly.

We find no error, and the judgment in each case is affirmed.

Judgment

This cause came on to be heard upon the transcript of the record of the circuit court of Pulaski County, First Division, and was argued by counsel; on consideration whereof it is the opinion of the Court that there is no error in the proceedings and judgment of said circuit court in this cause.

It is therefor considered by the Court that the judgment of said circuit court in this cause rendered be, and the same is hereby in all things affirmed with costs.

It is further considered that said appellee recover of said appellant all its costs in this Court, in this cause expended, and have execution thereof. Holt and George Rose Smith, *JJ.*, dissent.

December 22, 1958

Order on Rehearing

The Petition for rehearing is denied; and Mandate of this Court is stayed pursuant to motion of appellant.

January 19, 1959

LIBRARY
SUPREME COURT, U. S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 715

DAISY BATES — *Petitioner*

v.

CITY OF LITTLE ROCK — *Respondent*

RESPONSE OF CITY OF LITTLE ROCK TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

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City of Little Rock

RAY, SCOTT PRINTING CO., LITTLE ROCK

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 770.

DAISY BATES *Petitioner*

v.

CITY OF LITTLE ROCK *Respondent*

RESPONSE OF CITY OF LITTLE ROCK TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Respondent prays that the petition for the issuance of a writ of certiorari to review the judgment of the Supreme Court of the State of Arkansas entered in the above-entitled cause on December 22, 1958, be denied.

OPINIONS BELOW

The opinion of the Supreme Court of the State of Arkansas has not been officially reported but is found in 104 Law Rep. No. 13, at page 441 (Ark. Sup. Ct. Dec. 22, 1958).

QUESTION PRESENTED

The question presented is whether the occupational privilege tax ordinance here in issue, which requires a financial statement of the Little Rock Branch of the National Association for the Advancement of Colored People showing an itemized account of all receipts and disbursements, including the source and disposition by name and date, together with the net income of such organization for the purpose of determining whether or not such organization is engaged in a business for profit, and pursuant to which petitioner was convicted and sentenced to a fine of $25.00 for her refusal to comply, invades the rights of free speech and freedom of association protected by the Fourteenth Amendment to the Constitution of the United States.

STATEMENT

Petitioner, Mrs. Daisy Bates, was notified pursuant to Ordinance No. 10,638 to furnish information to the City Clerk of Little Rock concerning the Little Rock Branch of the National Association for the Advancement of Colored People, including the information required by section 2.E. of said ordinance which is as follows:

> "E. A financial statement of such organization, including dues, fees, assessments and or contributions paid, by whom paid, and the date thereof, together with the statement reflecting the disposition of such sums, to whom and when paid, together with the total net income of such organization."

On December 2, 1957, petitioner wrote the City Clerk supplying him with (a) the official name of the local organization; (b) information as to its regular meeting place; (c) the names of its officers, indicating that all

were unsalaried; (d) the purposes of such organization; (f) an affadavit of the president advising him that the Branch was an affiliate of a national organization; and (e) the following financial statement:

January 1, 1957, to December 1, 1957	
Total receipts from membership and contributors	$1,791.55
Total expenditures	1,491.46
Balance on hand	$ 300.09

Petitioner refused to furnish the detailed financial statement required by the ordinance, including a breakdown by name and date of the source and disposition of its receipts and expenditures as well as a statement of its net income for the year of 1957, on the alleged ground that the climate of public opinion in Arkansas was adverse to the association and that such disclosure might lead to harassment, economic reprisals, and physical harm against members and contributors and that the City was without authority, under the Constitution and laws of the United States, to demand the names and addresses of members of and contributors to the NAACP (R.51-55). For the failure of the organization to comply with the provisions of Section 2.E. of said Ordinance No. 10,638 requiring a detailed financial statement, Mrs. Bates was convicted and fined $100.00 in the Municipal Court of Little Rock (R.1). On appeal she was tried *de novo*, convicted and fined $25.00 in the Circuit Court of Pulaski County (R.7). Petitioner testified at her trial that it had been more difficult this year (1957) to secure contributions and memberships in the NAACP (R.25). The sponsor of the ordinance testified that the ordinance was designed to bring in more revenue (R.44).

REASONS FOR DENIAL OF THE WRIT

The decision of the Supreme Court of Arkansas in this cause is in accord with the applicable decisions of this Court and does not violate the constitutional guarantees of freedom of speech and association. See *United States* v. *Harriss*, 347 U.S. 612; *American Communications Association* v. *Douds*, 339 U.S. 382; and *Hubbard* v. *Mellon*, 5 Fed. 2d 764 (Ct. App. D.C., 1925). The ordinance under consideration does not by its own terms require that an organization submit a list of its members and their addresses and the record fails to show that its enforcement would constitute such a requirement. The ordinance requires a listing by name of the source of income as is required by the Internal Revenue Code of the United States (26 U.S.C. §§ 7602, 6103, 6011 and, e.g., I.R.S. Form 1040) and the Federal Lobbying Act (2 USC §§ 261 et seq.) and as this Court stated in *U. S.* v. *Harriss* case, *supra*, the hazard of a restraint on the freedoms of speech and association is too remote to require the striking down of the City's power to tax and a provision designed to enforce that power. The information submitted by the petitioner was not only violative of the requirement in the ordinance that the source of the dues and contributions be set forth, but violated the requirements that the dates of each such payment to it be set forth, as well as the persons to whom such funds were paid, the date thereof, and a statement of the net income, if any, of such organization (R.59). The information submitted by petitioner was wholly inadequate to determine the source and type of income received and could not be verified by the tax collector's office without additional information as to the specific receipts and disbursements as required by Ordinance No. 10,638. The financial statement furnished by Petitioner is one that any business enterprise could make with impunity if the City

can not go behind the bare statement of total income and disbursement to verify the information furnished.

The *National Association for the Advancement of Colored People* v. *Alabama*, 357 U.S. 449, is clearly distinguishable from the case at bar. There the State was seeking to enjoin the NAACP from conducting further activity within the State. Here there is an attempt to determine whether or not a privilege tax should be levied. True, no such tax has been levied, but this is because insufficient information was furnished to determine the business status of petitioner. In the *N.A.A.C.P.* v. *Alabama* case, *supra*, the court order required the submission to the court by the NAACP of all the names of its members and their addresses within the entire State while the purpose of the action was to determine if the association had failed to comply with the state statute requiring foreign corporations to file their corporate charters with the Secretary of State, designate a place of business, and an agent to receive service of process.

The ordinance under consideration can only violate the constitutional freedoms of speech and association if it in fact has a deterrent effect on such freedoms, and then only if the respondent fails to show a controlling justification for that deterrent effect. *N.A.A.C.P.* v. *Alabama*, *supra*. Such a deterrent effect the petitioner has wholly failed to prove. The cause of any refusal of persons to contribute to the NAACP in 1957 may well be and are quite probably attributable to other acts of racial strife within this community during the past months. This is no showing that an ordinance requiring an alleged nonprofit organization to furnish sufficient information for the City to accurately determine its profit or nonprofit status is in conflict with the constitutional freedoms of speech and association. Respondent submits that

the Constitution of the United States reserves to the State and a majority of its people, the power to tax and the power to enforce said tax, the latter being absolutely essential to the first. This power can not and should not be abrogated if our American system of government is to survive.

CONCLUSION

Wherefore, for the reasons hereinabove stated, it is respectfully submitted that this petition should be denied.

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FILED
SEP 18 1959
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 41

DAISY BATES,

Petitioner,

v.

CITY OF LITTLE ROCK,

Respondent.

BIRDIE WILLIAMS,

Petitioner,

v.

CITY OF NORTH LITTLE ROCK,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS

BRIEF FOR PETITIONERS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 41

DAISY BATES, ET AL.,

Petitioners,

v.

CITY OF LITTLE ROCK, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS

BRIEF FOR PETITIONERS

The opinion of the Supreme Court of the State of Arkansas (R. 66-77) is reported at 319 S. W. 2d 37. The opinion was from a divided court with Justices Holt and Smith dissenting.

Jurisdiction

The judgment of the court below was entered on December 22, 1958 (R. 77, 78). Rehearing was denied on January 19, 1959, with the mandate being stayed pending the filing and disposition of a petition for writ of certiorari in this Court (R. 78, 79). The petition was filed on March 13, 1959, and was granted on May 18, 19[illegible] (R. 80). The jurisdiction of this Court rests on Title 28, United States Code, Section 1257(3).

Question Presented

Whether Ordinance No. 10,638, an amendment to Ordinance No. 7444 governing the payment of an occupation license tax levied for the privilege of doing business within the city of Little Rock, and Ordinance No. 2683, an amendment to Ordinance No. 1786 governing the payment of an occupation license tax levied for the privilege of doing business within the city of North Little Rock, under which petitioners were tried and convicted because of their refusal to supply to city officials the names and addresses of the members and contributors of the National Association for the Advancement of Colored People in the municipalities involved, are inconsistent with the guaranty of freedom of association and of privacy in associational relationships secured against state encroachment by the Fourteenth Amendment to the Constitution of the United States?

Statement

The National Association for the Advancement of Colored People, as this Court knows from prior litigation, consists of a national organization, which is incorporated under the laws of the State of New York as a non-profit membership corporation, and local affiliates, which are independant unincorporated associations with membership in the local affiliates being equivalent to membership in the national organization. See *N.A.A.C.P. v. Alabama*, 357 U. S. 449.

Petitioners Bates and Williams are members of the local affiliate of the National Association for the Advancement of Colored People in Little Rock and in North Little Rock, respectively. Each is custodian of the membership list of the local organization to which she belongs, and petitioner Williams is President of the N.A.A.C.P. Branch in North Little Rock.

Ordinance No. 10,638 of Little Rock and Ordinance No. 2638 of North Little Rock are identical. They are the progeny of the Attorney General of Arkansas. They are popularly known as the "Bennett" ordinances and are so designated in the opinion of the court below (R. 66). Each ordinance requires that any organization operating within the municipality in question must supply to the City Clerk upon request and within a specified time (1) the official name of the organization; (2) its headquarters or regular meeting place; (3) the names of the officers and their salaries; (4) the purpose of the organization; (5) a statement as to dues, assessments and contributions paid, by whom and when paid, together with a statement reflecting the disposition of the funds and the net income; (6) and an affidavit indicating whether the organization is subordinate to a parent organization and the latter's name. The ordinances specifically provide that all information furnished shall be public and subject to inspection during reasonable office hours (R. 29-31, 37-38).

A demand was made on petitioner Bates for the aforesaid information in respect to the N.A.A.C.P. in Little Rock, and on petitioner Williams in respect to the N.A.A.C.P. in North Little Rock. In each instance, substantially all the information was furnished except the names of members and contributors.

The Little Rock and the North Little Rock Branches of the N.A.A.C.P. advised the city council by letter, through their respective Presidents, of their official name, their place of meetings and the names of their officers, all of whom are unsalaried. The Articles of Incorporation of the parent organization were quoted as follows:

> . . . voluntarily to promote equality of rights and eradicate caste or race prejudice among the citizens of the United States; to advance the interest of colored citizens; to secure for them impartial suffrage; and to increase their opportunities for secur-

> ing justice in the courts, education for their children, employment according to their ability, and complete equality before the law. To ascertain and publish all facts bearing upon these subjects and to take any lawful action thereon; together with any kind and all things which may lawfully be done by a membership corporation organized under the laws of the State of New York for the further advancement of these objects.

for a description of aims and purposes. It was stated that each local affiliate had been chartered and organized in accord with those purposes and was seeking to effectuate the stated objectives within its community. The specific information requested as to finances was not given, but a statement showing total receipts, total expenditures and the balance on hand was furnished. The requisite affidavit, to the effect that the organization was an affiliate of the National Association for the Advancement of Colored People, a New York corporation, was filed.

The anti-N.A.A.C.P. climate in the State, a belief that public identification of members and contributors might subject them to harassment, economic reprisals and bodily harm, and a claim of a constitutional privilege under both the federal and state Constitutions were cited as the bases for the refusal to disclose the names and addresses of members and contributors and any information leading to their ascertainment. Copies of the Constitution of the national organization and of the Constitution and By-laws for Branches were enclosed (R. 25-28, 40-43).

Each petitioner was tried and convicted for a violation of the ordinance in question in the Municipal Court of her respective community. Mrs. Bates was fined $100.00 and Mrs. Williams was fined $25.00. On appeal to the Circuit Court of Pulaski County each was tried de novo, again convicted and each fined $25.00 (R. 25, 65). The ordinances were held valid, and claimed infringements of constitutional rights were held to be without substance (R. 25, 65).

The cases were consolidated in the Supreme Court of Arkansas, and the sentences and convictions upheld by a divided court (R. 77). In its opinion the court below sought to distinguish the instant litigation from this Court's holding in *N.A.A.C.P.* v. *Alabama*, 357 U. S. 449. It concluded that here the intrusion on freedom of speech and association was a "mere incident to a permissible legal result" (R. 75). As such, the ordinances were held to impinge in no way upon the safeguards provided under the due process clause of the Fourteenth Amendment to the Constitution of the United States.

The Ordinances Involved

Arkansas Statutes, 1947, Section 19-4601 authorizes municipalities to levy a tax on any person, firm, individual or corporation engaging in any "trade, business, profession or calling" within their territorial limits. The pertinent statutory provisions follow:

> Hereafter any city council, board of commissioners of board of aldermen . . . shall have the power to enact . . . an ordinance . . . requiring any person, firm, individual or corporation who shall engage in, carry on, or follow any trade, business, profession, vocation or calling, within the corporate limits of such city . . . to take out and procure a license therefor and pay into the city or town treasury before receiving same, such a sum or amount of money as may be specified by such ordinance or ordinances for such license and privilege. The city council . . . shall have the right to classify and define any trade, business, profession, vocation, or calling and to fix the sum or amount any person, firm, individual or corporation shall pay for such license required for the privilege of engaging in, carrying on, or following, any trade, business, vocation, or calling, based on the amount of goods, wares or merchandise carried in stock in any business, or the character and kind of trade, business, profession,

> vocation, or calling, but no classification shall be based upon earnings or income and shall have the full power to punish for violation of such ordinance . . .

Pursuant to these provisions, the city of Little Rock enacted Ordinance No. 7444 (R. 29) and North Little Rock enacted Ordinance No. 1786 (R. 37) which established an annual occupation license tax on various businesses, occupations and professions.

Ordinance No. 10,638 of Little Rock and Ordinance No. 2683 of North Little Rock are the latest in a long series of amendments to these basic privilege license tax enactments. Ordinance No. 10,638 enacted by the City of Little Rock, which is identical in terms to Ordinance No. 2683, provides as follows:

> WHEREAS, it has been found and determined that certain organizations within the City of Little Rock, Arkansas, have been claiming immunity from the terms of Ordinance No. 7444, as amended, governing the payment of occupation licenses levied for the privilege of doing business within the city, upon the premise that such organizations are benevolent, charitable, mutual benefit, fraternal or non-profit, and
>
> WHEREAS, many such organizations claiming the occupation license exemption are mere subterfuges for businesses being operated for profit which are subject to the occupation license ordinance; Now, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LITTLE ROCK, ARKANSAS:
>
> SECTION 1. The word "organization" as used herein means any group of individuals, whether incorporated or unincorporated.
>
> SECTION 2. Any organization operating or functioning within the City of Little Rock, including but not limited to civic, fraternal, political, mutual benefit, legal, medical, [fol. 59] trade, or other organization, upon the request of the Mayor, Alderman,

Member of the Board of Directors, City Clerk, City Collector, or City Attorney, shall list with the City Clerk the following information within 15 days after such request is submitted:

A. The official name of the organization.

B. The office, place of business, headquarters or usual meeting place of such organization.

C. The officers, agents, servants, employees or representatives of such organization, and the salaries paid to them.

D. The purpose or purposes of such organization.

E. A financial statement of such organization, including dues, fees, assessments and or contributions paid, by whom paid, and the date thereof, together with the statement reflecting the disposition of such sums, to whom and when paid, together with the total net income of such organization.

F. An affidavit by the president or other officiating officer of the organization stating whether the organization is subordinate to the parent organization, and if so, the name of the parent organization.

SECTION 3. This ordinance shall be cumulative to other ordinances heretofore passed by the City with reference to occupation licenses and the collection thereof.

[fol. 60] SECTION 4. All information obtained pursuant to this ordinance shall be deemed public and subject to the inspection of any interested party at all reasonable business hours.

SECTION 5. Any section or part of this ordinance declared to be unconstitutional or void shall not affect the remaining sections of the ordinance, and to this end the sections or subsections hereof are declared to be severable.

SECTION 6. Any person or organization who shall violate the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in a sum not less than $50.00 nor more than $250.00, and each day of violation shall constitute a separate offense. The City Council in the enforcement of this ordinance shall have the power to see injunctive relief.

SECTION 7. It has been found and determined by the City Council that certain organizations operating within the City of Little Rock have failed to comply with the terms of Ordinance No. 7444, as amended, governing the payment of occupation licenses, and as a result thereof, needed revenue is being lost, and the enactment of this ordinance will provide for more efficient administration of such ordi- [fol. 61] nance. Therefore, an emergency is declared to exist, and this ordinance being necessary for the preservation of the public peace, health, and safety, shall take effect and be in force from and after its passage and approval.

Summary of Argument

Petitioners have been convicted and fined for violating the municipal ordinances here involved, because of their refusal to furnish to city officials the names and addresses of N.A.A.C.P. members and contributors. Petitioners contend that these ordinances are invalid under the rationale of *N.A.A.C.P.* v. *Alabama*, 357 U. S. 449. Here, as there, the enforced public identification of those associated together in the N.A.A.C.P. constitutes an effective restraint upon the free exercise of constitutional guarantees of freedom of speech and association and is an unwarranted infringement upon the privacy of associational relationships. The corrosive and stifling effect on freedom and privacy which these ordinances accomplish cannot be justified under any yardstick established in the decisions of this Court.

See *Sweezy* v. *New Hampshire*, 354 U. S. 234; *United States* v. *Rumely*, 345 U. S. 41; *Wieman* v. *Updegraff*, 344 U. S. 148; *Thomas* v. *Collins*, 323 U. S. 516; *Murdock* v. *Pennsylvania*, 319 U. S. 105; *DeJonge* v. *Oregon*, 299 U. S. 353; *Grosjean* v. *American Press Co.*, 297 U. S. 233.

No secret oath-bound organization committed to lawlessness is here involved. *Bryant* v. *Zimmerman*, 278 U. S. 63; nor are rights of freedom of speech and association being asserted to accomplish an unlawful purpose. *Hughes* v. *Superior Court*, 339 U. S. 460. There is, moreover, absent that problem of suspected subversion which has led this Court to sustain inroads upon this area of personal liberty, as a proper exercise of governmental right of self-preservation, which, under other circumstances, would not be countenanced. See *Uphaus* v. *Wyman*, 360 U. S. 72; *Barenblatt* v. *United States*, 360 U. S. 109. Nor is the situation here presented one in which the infringement complained of is a necessary incident to the valid exercise of governmental authority in another area. See, e.g., *American Communications Association* v. *Douds*, 339 U. S. 382. Cf. *Speiser* v. *Randall*, 357 U. S. 513; *First Unitarian Church* v. *Los Angeles*, 357 U. S. 545. Indeed, there is no rationale which can supply that compelling justification essential to the validity of the provisions at issue. See *Sweezy* v. *New Hampshire*, *supra*.

The ordinances are amendments to municipal privilege license tax laws pursuant to which various commercial, business and professional occupations are required to pay a fee for the privilege of doing business. This authority relates solely to commercial enterprises. There was no showing below that the N.A.A.C.P. was engaged in any of the occupational activities taxed, or that any demand had been made upon the organization or its officers for the payment of a tax. The record does reveal that the ordinances were enacted to find out what was going on in the N.A.A.C.P., but mere curiosity would not seem to be sufficient warrant for curbing freedom of speech and associa-

tion or for invading that privacy of association which the federal Constitution secures. In fact, there is no substantial relationship between the disclosures here sought and effective exercise of the municipal taxing authority which is the purported reason for the enactment of both ordinances.

The N.A.A.C.P. is a dissident organization, unpopular in many areas in the United States, because its fundamental purposes and aims are to eliminate enforced racial segregation and to secure equal citizenship status for Negroes. Movement towards those objectives has effected a major upheaval in the complex of Negro-white relations throughout the United States. Especially in the South today is there fierce resistance to the changes in ideas and customs which eradiction of racial discrimination necessitates. The N.A.A.C.P. is regarded as the major enemy by those who would maintain the status quo in race relations in the South, and its destruction is their primary target. It was in this climate that these regulations were enacted and petitioners convicted. The basic reason for enacting and enforcing these ordinances in Little Rock and North Little Rock was to frighten, intimidate and coerce those who belong to the N.A.A.C.P., or who believe in its objectives, into abandoning their ideas of equality and activities in furtherance thereof—in short, to stifle freedom of speech and association. The restrictive and deadening effect on the free exercise of these freedoms is clearly demonstrated in this record, without manifestations of any compelling subordinating state interest, which might conceivably justify this result. The ordinances in question and petitioners' convictions and fines thereunder, therefore, cannot be squared with the principles enunciated in the decisions of this Court. See *N.A.A.C.P.* v. *Alabama, supra; Sweezy* v. *New Hampshire, supra.*

ARGUMENT

I

N.A.A.C.P. v. *Alabama Controls* Decision Here.

The present litigation differs from *N.A.A.C.P. v. Alabama*, 357 U. S. 449, only in minor and insignificant particulars. In that case, a contempt adjudication based upon a refusal to comply with a court order alleged to be an invasion of freedom of speech and association was involved. Here, convictions and sentences for refusal to comply with the terms of municipal ordinances allegedly in violation of those constitutional guarantees are before this Court. In both instances, the interference complained of concern the freedom and privacy of associational relationships of members and contributors of the National Association for the Advancement of Colored People. Unquestionably, the constitutional proscription against state encroachment on freedom of association is not affected merely by the form in which the state's prohibited action is taken. See *Aaron* v. *Cooper*, 358 U. S. 1, 3 L. ed. (Adv. p. 3, 16). In the *Alabama* case, the constitutional claim was made by the organization on behalf of its members and here, by custodians of the membership list as a defense to criminal prosecutions, both on their own behalf and on behalf of N.A.A.C.P. members and contributors.

Whatever question there may be concerning application of the constitutional guarantees of freedom of speech and of association to a particular set of facts and circumstances in a specific case, there is no doubt that the Fourteenth Amendment prohibits governmental interference with these freedoms and with individual privacy in their exercise, absent a showing of some overriding and compelling state justification for the intrusion. See *Sweezy* v. *New Hampshire*, 354 U. S. 234; *Staub* v. *Baxley*, 355 U. S. 313;

N.A.A.C.P. v. *Alabama*, *supra*; *Wieman* v. *Updegraff*, 344 U. S. 148.

To give effect to the claimed right of freedom of speech and of association raised here would not license a violation of some important state policy, protecting or fostering a legitimate societal interest. Cf. *Hughes* v. *Superior Court*, 339 U. S. 460. The rationale which has sustained the right of governments to take measures to meet problems of subversion, see *Uphaus* v. *Wyman*, 360 U. S. 72; *American Communications Association* v. *Douds*, 339 U. S. 382; *Garner* v. *Board of Public Works*, 341 U. S. 716, "which in a different context [would raise] constitutional issues of the gravest character," *Barenblatt* v. *United States*, 360 U. S. 109, 128, has no present application. Nor is this a valid exercise of state taxing authority in which encroachment on freedom of speech and of association is a necessary and unavoidable incident. Cf. *Speiser* v. *Randall*, 357 U. S. 513; *First Unitarian Church* v. *Los Angeles*, 357 U. S. 545. On the contrary, these ordinances and the resultant convictions now before this Court are simply attempts on the part of city officials to liquidate the pressure for equal citizenship rights for Negroes by seeking to resist and turn back the momentum of our history, with its ever present antipathy to racial discrimination, albeit often ambivalent and tenuous, by suppressing the N.A.A.C.P. through the exposure of its members and contributors to the hostility of an adverse climate of public opinion.

The record fails to disclose any subordinating state interest which would justify the interference and restriction which the ordinances effect. It is respectfully submitted, therefore, that under the yardstick applied in the decisions of this Court, these regulations are unconstitutional intrusions on freedom of association, and the convictions thereunder must be set aside. See *N.A.A.C.P.* v. *Alabama*, *supra*.

II

Unwarranted Interference With the Free Exercise of Rights of Freedom of Speech and of Association Is Here Involved.

The Interference Effected Cannot Be Sustained on the Ground That It is a Part of a Long State Tradition.

The Supreme Court of Arkansas seeks to justify these provisions on the ground that the enforced disclosure of organizational members is a requirement of long standing in the statutory law of the State. Section 64-1302, Arkansas Statutes, 1947, is cited to support this statement. That statute provides:

> Any association of persons *desirous* of becoming incorporated, under the provisions of this act [§§ 64-1301-64-1308] shall file with the Clerk of the Circuit Court and Recorder for the proper county a copy of their constitution or articles of association, and a list of all the members, together with a petition to said court for a certificate of incorporation under the provisions of this act. (Emphasis added.)

In short, where a group of persons desires to incorporate, it may do so provided certain information is given to state officials, including a list of members of the group.

Section 64-1306, Arkansas Statutes, 1947, sets out specific advantages which corporate status may bring. It provides:

> Any such corporation shall have power to borrow or raise money necessary or convenient to the accomplishment of the purposes of the association or corporation and, from time to time, without limitation upon amount, draw, make, accept, indorse, execute, and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable and non-negotiable instruments and evidences of indebtedness and to secure the payment

> of any thereof and the interest thereon by mortgage, pledge, conveyance or assignment in trust of the whole or any part of the property of the association or corporation whether at the time owned or thereafter acquired; to sell, pledge, or otherwise dispose of bonds or other obligations of the association or corporation for its corporate purposes; to cooperate with any government agency or agencies whether national, state, county or municipal, or with any business or private agency whatsoever in carrying out the purposes herein contemplated; to acquire by gift or in any other manner and to sell, lease, mortgage, pledge, assign, transfer or otherwise dispose of lands or real property. . .
>
> Such corporation and association shall have the capacity of suing and being sued and is authorized to do any and all things necessary, convenient, useful or incidental to the attainment of its purposes as fully and to the same extent as natural persons lawfully might or could do, as principals, agents, contractors, trustees or otherwise.

But the foregoing statutes have no bearing on the instant litigation. The National Association for the Advancement of Colored People, the parent organization, is a New York corporation. Neither the Little Rock nor the North Little Rock N.A.A.C.P. Branches, which are unincorporated associations, have sought to avail themselves of the privileges afforded by Sections 64-1302 and 64-1306. These statutes require that an organization disclose its members, if it desires to obtain those advantages which corporate status affords. In exchange for these special privileges, the relinquishment of the privacy of associational relationships is exacted. But Cf. Mr. Justice Frankfurter's opinion in *Garner v. Board of Public Works, supra* at 724. Disclosure is not compelled, it is purely optional.[1] Thus, petitioners submit, these statutory provisions furnish no support for the restrictions here involved.

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[1] Moreover, it should be added, Section 64-1302 does not require the filing with the Secretary of State a current list of members, but only a list of those members at the time the incorporation is sought.

The Occupation License Tax Ordinances Involved Here, With Their Manifold Amendments, Have No Application to the Activities of a Non-Profit Membership Organization Whose Primary Objectives and Principal Activities Are Directed Towards the Improvement of the Status of Negro Citizens.

Section 19-4601, Arkanas Statutes, 1947, and the occupation license tax ordinances enacted thereunder, apply to commercial enterprises. See *Texarkana* v. *Taylor*, 185 Ark. 1145, 51 S. W. 2d 856 (1932) (involving a tax on occupations, including attorneys-at-law); *Texarkana* v. *James & Mayo Realty Co.*, 187 Ark. 764, 62 S. W. 2d 42 (1933) (involving a broker's tax on persons engaged in the buying and selling of real estate); *Newark* v. *Edwards*, 208 Ark. 276, 185 S. W. 2d 925 (1945) (involving a tax on meat markets); *Talley* v. *Blytheville*, 204 Ark. 746, 164 S. W. 2d 900 (1942) (involving a tax on taxicab service).

A tax on interstate commerce was held invalid. See *Ft. Smith* v. *Midland Valley R. Co.*, 156 Ark. 479, 246 S. W. 842 (1923). And in *Berry* v. *Hope*, 205 Ark. 1105, 172 S. W. 2d 922 (1943), an ordinance, requiring a license for the house to house selling "of goods, wares and merchandise of any description," as applied to the sale of religious tracts by members of the Jehovah Witnesses, was held to constitute an unlawful invasion of guarantees of freedom of speech and of religion in accord with this Court's decision in *Murdock* v. *Pennsylvania*, 319 U. S. 105. Thus, Arkansas decisional law expressly recognizes that the municipal taxing power authorized by Section 19-4601, Arkansas Statutes, 1947, is subject to limitations imposed by the provisions of the federal Constitution.

Ordinance No. 7444 of Little Rock, as originally enacted, applied to a variety of commercial enterprises ranging from advertising, abstract and title companies, billiard and pool miniature companies, cobblers, florists, mattress

manufacturers to vending machine scales (Tr. 65).[2] It was first amended by Ordinance No. 7469 (Tr. 103, 106) which sought to clarify the various classifications of the businesses affected. Ordinance No. 7475, the second amendment, levied a tax on cleaning and pressing establishments (Tr. 112); Ordinance No. 7483 affected U-Drive cars (Tr. 114); Ordinance No. 7504, plumbing and gas fittings (Tr. 117); Ordinance No. 7527, frozen food lockers and public warehouses (Tr. 119); Ordinance No. 7538, airplane sales and services (Tr. 121); Ordinance No. 7573, interstate and radio broadcasting (Tr. 123); Ordinance No. 7677, collecting agencies (Tr. 128); Ordinance No. 7803, parking lots (Tr. 130); Ordinance No. 7809 relieved charitable organizations engaging in the occupations affected from the payment of the privilege tax (Tr. 132); Ordinance No. 7876, washaterias (Tr. 134); Ordinance No. 7843, auditors and accountants (Tr. 136); Ordinance No. 7844, stage shows, vaudeville acts, etc. (Tr. 138); Ordinance No. 7934, junk dealers (Tr. 142); Ordinance No. 7935, co-operated radios (Tr. 144); Ordinance No. 8017, auctioneers (Tr. 146); Ordinance No. 8139, photographers (Tr. 148); Ordinance No. 8191, tree surgery (Tr. 154); Ordinance No. 8049, premium stamps (Tr. 158); Ordinance No. 8214, floor finishers (Tr. 161); Ordinance No. 8228, mobile produce salesmen (Tr. 163); Ordinance No. 8236, street cars and bus advertising (Tr. 167); Ordinance No. 8261, display advertising (Tr. 169); Ordinance No. 7515, linen and towel supply service (Tr. 171) Ordinance No. 8530, bakeries and doughnut shops (Tr. 173); Ordinance No. 8531, automobile dealers (Tr. 177); Ordinance No. 8554, portable typewriters and small adding machines (Tr. 178); Ordinance No. 8568, sightseeing coaches (Tr. 179); Ordinance No. 8980, the production of electricity (Tr. 188); Ordinance No. 9014, the distribution and sale of natural gas (Tr. 191);

[2] The "Tr." citations here are to the original unprinted record on file in the office of the Clerk of this Court.

Ordinance No. 9015, the Southwestern Bell Telephone Company (Tr. 194); Ordinance No. 9125, meat inspection (Tr. 199); Ordinance No. 9161, drive-in theatres (Tr. 205); Ordinance No. 9162, television (Tr. 207); Ordinance No. 9241, pistols (Tr. 211); Ordinance No. 9243, municipal owned auditoriums (Tr. 220); Ordinance No. 9306, professional bondsmen (Tr. 225); Ordinance No. 9328, convalescent nursing homes (Tr. 251); Ordinance No. 9378 repealed Ordinance No. 9241 (Tr. 255); Ordinance No. 9406, the sale and transfer of pistols (Tr. 256); Ordinance No. 9845, ice manufacturing (Tr. 262); Ordinance No. 10,063 repealed Ordinance No. 9125 with respect to meat inspection (Tr. 264); Ordinance No. 10,467 amended Ordinance Nos. 7476 and 9845 in respect to ice manufacturing (Tr. 266); Ordinance No. 10,270, automobile express business (Tr 268); Ordinance No. 10,495, the Midwest Video, Inc. (Tr. 270); Ordinance No. 10,496, the Rowley United Theatres, Inc. (Tr. 276); and Ordinance No. 10,638, the present amendment.

These provisions were squarely aimed at reaching all the professional, commercial and business occupations within the municipality. The tax is not automatic, and before the city can require payment of the tax, there must be a showing that the individual or organization affected is engaged in one of the activities for which a license is required. See *Speiser* v. *Randall, supra.* Thus, here there must have been a showing (1) that the N.A.A.C.P. was engaged in a business or commercial activity for which a license is required; (2) that a claim for payment of the tax has been made; (3) that an immunity based upon the non-profit character of the organization was asserted. Only then are the provisions of Ordinances No. 10,638 and 2638 conceivably applicable. None of these prequisities is present in this record.

Even Assuming *Arguendo* That These Ordinances Could Be Validly Applied Here, the Requirement That the Names of Members and Contributors Be Disclosed to City Officials and Be Subject to Public Inspection Bears No Reasonable Relationship to A Lawful and Effective Exercise of the Municipal Taxing Authority, Which is the Purported Purpose of These Regulations.

The occupation license tax is either a flat tax on the occupation affected, a pro rata tax upon stocks, goods on hand or upon capacity of the establishment, or a per capita tax upon the number of specialized employees. It seems obvious, therefore, petitioners respectfully submit, that the names of an organization's members and contributors have no bearing upon the effective enforcement of the occupation tax ordinance, or upon whether the N.A.A.C.P. is engaged in a taxed occupation, is a non-profit organization and exempt from the tax, or operating for profit and subject to the tax.

The evidence in the record conclusively reveals that these "tax revenue measures" were principally intended to interfere with the freedom of association of members of petitioners' organization.

Mr. Loy, sponsor of Ordinance No. 10,638, testified as follows in respect to its purposes (R. 22-24).

> A. The purpose of the ordinance and me being Vice Chairman of the Finance Committee of Little Rock, and the City being in a condition of very bad financial strain, it was determined that if we could strengthen the privilege tax ordinance it would bring in the additional revenue the City needed and the purpose back of the ordinance was strictly to develop revenue.
>
> Q. I take it that there had been evidence brought before the City Council that there had been violations of the privilege tax ordinance by organizations? A. We have had in the City of Little Rock in the past year numerous different organizations that were formed, clubs, organizations and what-not.

It was thought that in many cases that many of these organizations were not paying their proper privilege taxes.

Q. Well, now, just two questions. I want to refer specifically to Paragraph E of the ordinance. What was the purpose of the requirement you made of identifying the persons who paid dues, fees, assessments and/or contributions insofar as this would strengthen the privilege tax ordinance and bring in increased revenue for the City?

* * *

A. Under the State laws, any individual, company or corporation or what have you that wants to sell beer—if it happened to be in my Ward, I would have to approve the approval of the beer license before that person, firm or corporation would be permitted to have a license in the City of Little Rock. Not only that, but in doing that, we have to determine who owns or belongs to the different organizations from a felony standpoint and from a gambling standpoint and consequently that paragraph in the ordinance was specifically to determine whether any of the members or the individual, firm or corporation was guilty of a felony or possibly gambling or liquor violations or gambling violations that had been previously done or would be done in the future.

Q. In other words, as I understand your statement, Paragraph E of the ordinance applies only to organizations that sell beer or sponsor gambling, is that correct? A. There is no way to determine, if you read the ordinance and where you have maybe 50 or 100 or several hundred individuals, firms or corporations—to determine what the intent or what the characterability of the people was unless you had a complete list of who was involved.

Q. Would the list of names help you to know whether or not they sold beer or gambled? A. The Police Department has a pretty good idea of the different people in Little Rock in the different organizations, clubs and what have you.

Q. You have in Paragraph D of the Ordinance, "The purpose or purposes of such organization"—I am reading from the ordinance? A. That's right.

Q. As I understand your testimony, you need the names and addresses of the people you request in Paragraph E to determine whether or not they have committed some felony or engaged in gambling? A. If they had nothing to hide in any way, they wouldn't have any objection to going ahead and answering the questions as put out in the ordinance if they had nothing to hide.

Mr. Paul O. Duke, sponsor of Ordinance No. 2683, similarly described its purposes (R. 48-50):

Q. Mr. Duke, did you sponsor this Ordinance? A. I did.

Q. Then you are quite familiar with the contents of it? A. Fairly well.

Q. Now in the introductory clause of this Ordinance, it is stated that it was enacted for the purpose of implementing your Privilege Tax Ordinance which is No. 1786. Are you familiar with that Ordinance? A. That is right, yes, sir.

Q. Also in your introductory clause of 2683 it is stated that certain organizations have been claiming immunity to this Privilege Tax. Now, to your knowledge, do you know whether or not a request has ever been made on the North Little Rock Branch of the NAACP for a Privilege Tax? A. Not that I know of.

Q. I will further ask you, sir, in what way does North Little Rock City Ordinance No. 2683 implement your Privilege Tax Ordinance? A. Now, that is a connection there that it was just trying to find out if there was a privilege tax involved in this, in your organization, the NAACP.

Q. Now, you further stated that you are familiar with your Privilege Tax Ordinance which is 1786, and I believe in that Ordinance you have a list of the organizations and list of businesses that are subject to that privilege tax, is that correct, sir? A. Yes, sir, there is.

Q. Now, have you personally examined City Ordinance No. 1786 to determine whether or not this organization is covered by this tax? A. Not completely.

Q. And you voted on this measure 2683 before you investigated 1786 to determine whether or not this organization was subject to it? A. I did.

Q. Well, what did you find, sir? A. That this was up to the discretion of the Ordinance to be involved to see if there was privilege tax due the City of North Little Rock.

Q. And I believe you stated that you are familiar with the Privilege Tax Ordinance? A. I said to some extent.

Q. To some extent. Then you don't know whether or not your privilege tax ordinance covers this organization already, do you? A. I couldn't say.

Q. All right, sir. I would like for you to tell the Court just in what way would the listing of the official name of the organization, business place or its meeting place, the names and addresses of contributors would implement your tax ordinance? A. This was simply put in to see if there was other means involved in your organization. We were not—we are not acquainted with your organization whatsoever.

Q. Then you just wanted to find out what goes on in the organization, is that right? A. That is right. By our rights—

Q. Sir? A. By our rights we are asking that.

This testimony indicates that the municipalities purport to use their taxing authority in order to violate rights of freedom of speech and association. This, petitioners submit, the state cannot do, and these ordinances, therefore, do not meet the standards required by the Fourteenth Amendment. See *Murdock* v. *Pennsylvania, supra; Grosjean* v. *American Press Co.*, 297 U. S. 233.

III

The Ordinances Are Actual And Effective Interferences With Freedom of Association and Not A Mere Abstract Impairment of Constitutional Rights.

Petitioners based their refusal to comply with the terms of the ordinances, which required disclosure of the names and addresses of members and contributors of the N.A.A.C.P. on the fear and belief that such disclosure would lead to reprisals, harassment and bodily harm. In the testimony introduced or proffered below, it was shown that there had been a loss in membership of both Branches, which was attributed to fear on the part of persons who normally joined that their names might be published and they might suffer hardship (R. 10-19; 52-56; 58-62). There was also testimony that persons who had become publicly identified with the Association had been subjected to pressures and harassment. Both Mr. Fair, Vice President of the North Little Rock N.A.A.C.P. Branch, and petitioner Williams received annoying telephone calls and had to have their telephone numbers changed several times (R. 55, 60). Mrs. Williams had rocks thrown at her home, and her life was threatened by letter and over the phone (R. 60). She was denied temporary employment which she normally received each year (R. 61). She was pointed out on the street as the woman who had been arrested because of belonging to the N.A.A.C.P. (R. 61). The devastating and corrosive effect on freedom of association caused by the public identification of N.A.A.C.P. members is perhaps best epitomized by petitioner Williams' statement that none of the annoyances or harassments testified to had occurred before passage of the "Bennett" ordinance and her public identification with the Association. "I was called a respectable woman before that time" (R. 62).

Ordinances 10,638 and 2683 are another in a series of efforts on the part of southern communities to restrict and

stifle the activities of the N.A.A.C.P., apparently in the belief that by silencing the organization, the demand for equal rights and equal justice will also die. See Robison, "Protection of Associations From Compulsory Disclosure of Membership," 58 *Col. L. Rev.* 614 (1958); "Freedom of Association," 4 *Race Rel. L. Rep.* 207 (1959). Many of these attempts have reached this Court. See, e.g., *N.A.A.C.P.* v. *Alabama*, *supra*, and 360 U. S. 240 (again reversing the judgment of the Supreme Court of Alabama); *N.A.A.C.P.* v. *Harrison*, 360 U. S. 467 (vacating and remanding the judgment below on application of the doctrine of federal abstention); *N.A.A.C.P.* v. *Committee on Offenses Against the Administration of Justice*, 358 U. S. 40 (vacating the judgment below and remanding cause as moot); *N.A.A.C.P.* v. *Arkansas, ex rel Bruce Bennett, Attorney General*, 360 U. S. 909 (certiorari denied); *N.A.A.C.P.* v. *Bennett*, 360 U. S. 471 (vacating and remanding judgment below for reconsideration in light of *N.A.A.C.P.* v. *Harrison*); *N.A.A.C.P.* v. *Williams*, 359 U. S. 550 (certiorari denied in absence of a final judgment); *Gibson* v. *Florida Legislative Investigation Committee*, 360 U. S. 919 (certiorari denied); see also *Scull* v. *Virginia*, 359 U. S. 344; *Bryan* v. *Austin*, 148 F. Supp. 563 (E. D. S. C. 1957), vacated and remanded, 354 U. S. 933; *Shelton* v. *McKinley*, — F. Supp. — (E. D. Ark. June 8, 1959).

The purpose and effect of these regulations are to restrict and curb N.A.A.C.P. activities by interfering with the freedom and privacy of associational relationships of members in the N.A.A.C.P. Merely because the views and objectives of the Association do not meet with the approval of state and local officials in Arkansas, see *Cooper* v. *Aaron*, *supra*, the state cannot interfere with the rights of individuals to freely advocate realization of those objectives and to associate together in the N.A.A.C.P. for the purpose of engaging in lawful activity in furtherance of these aims. Such, however, is what is attempted here.

CONCLUSION

Wherefore, for the reasons hereinabove stated, petitioners submit that the convictions and sentences here involved should be reversed, and that Ordinance No. 10,638 and Ordinance No. 2638 should be struck down as prohibited by the due process clause of the 14th Amendment to the Constitution of the United States.

Respectfully submitted,

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Certificate of Service

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SUPREME COURT OF THE UNITED STATES

October Term, 1959

No. 41

DAISY BATES — *Petitioner*

v.

CITY OF LITTLE ROCK — *Respondent*

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS

BRIEF FOR RESPONDENT CITY OF LITTLE ROCK

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS

BRIEF FOR RESPONDENT CITY OF LITTLE ROCK

QUESTION PRESENTED

The question presented herein is whether the right of free speech and association, provided for by the Fourteenth Amendment to the Constitution, guarantees immunity to the petitioner from provisions of State action, manifested by the City's Occupational Privilege Tax Ordinance, which, when invoked, requires a benevolent or non-profit organization to furnish an itemized account of all receipts and disbursements including the source and disposition by name and date, together with net income of such organization, all of which information is to be used

for the purpose of determining whether a tax on such organization is justified.

STATEMENT

On October 14, 1957, the City Council of the City of Little Rock passed Ordinance No. 10,638 amending the Occupational Privilege Tax Ordinances of the City of Little Rock. Ordinance No. 10,638 establishes a procedure whereby organizations can be required to furnish certain information to the City Clerk of the City of Little Rock for the purpose of determining whether or not the organization should or should not be exempt from the occupation tax.

Petitioner, Mrs. Daisy Bates, was notified pursuant to Ordinance No. 10,638 to furnish information to the City Clerk of Little Rock concerning the Little Rock Branch of the National Association for the Advancement of Colored People, including the information required by Section 2.E. of said ordinance which is as follows:

> "E. A financial statement of such organization, including dues, fees, assessments and/or contributions paid, by whom paid, and the date thereof, together with the statement reflecting the disposition of such sums, to whom and when paid, together with the total net income of such organization."

Section 5 of said ordinance provides that "Any section or part of this ordinance declared to be unconstitutional or void shall not affect the remaining sections of the ordinance, and to this end the sections or subsections hereof are declared to be severable" (R.30).

On December 2, 1957, petitioner wrote the City Clerk supplying him with (a) the official name of the local organization; (b) information as to its regular meeting place;

(c) the names of its officers, indicating that all were unsalaried; (d) the purposes of such organization; (f) an affadavit of the president advising him that the Branch was an affiliate of a national organization; and (e) the following financial statement:

January 1, 1957, to December 1, 1957	
Total receipts from membership and contributors	$1,791.55
Total expenditures	1,491.46
Balance on hand	$ 300.09

Petitioner refused to furnish the detailed financial statement required by the ordinance, including a breakdown by name and date of the source and disposition of its receipts and expenditures as well as a statement of its net income for the year of 1957, on the alleged ground that the climate of public opinion in Arkansas was adverse to the association and that such disclosure might lead to harassment, economic reprisals, and physical harm against members and contributors and that the City was without authority, under the Constitution and laws of the United States, to demand the names and addresses of members of and contributors to the N.A.A.C.P. (R.51-55). For the failure of the organization to comply with the provisions of Section 2.E. of said Ordinance No. 10,638 requiring a detailed financial statement, Mrs. Bates was convicted and fined $100.00 in the Municipal Court of Little Rock (R.7). On appeal she was tried *de novo*, convicted and fined $25.00 in the Circuit Court of Pulaski County (R.7). The ordinance was held valid and claimed infringements of Constitutional rights were held to be without substance (R.25,65).

This case was heard in the Supreme Court of Arkansas in conjunction with a similar case arising in North

Little Rock, Arkansas. There were separate appeals; but the cases were disposed of in a single opinion in the Supreme Court of the State of Arkansas because, as stated by the Court, the constitutionality was the point at issue in each case and the claims and defenses of each appellant were the same (R.67). However, there are significant differences in the facts of the Little Rock and North Little Rock Cases. As reflected by the record, Daisy Bates has never been requested to furnish the names and addresses of the members of the N.A.A.C.P. Rather, it was stipulated by counsel that she had been notified to comply with Ordinance No. 10,638 (R.5,6) and that she refused to do so (R.6). Ordinance No. 10,638 does not require the submission of the names and addresses of an organization's members. It requires only that the names of the financial supporters of the organization be furnished. The petitioner not only failed to submit the names of financial supporters, but refused to submit a breakdown of receipts by date, the names of persons to whom disbursements were made, the dates thereof, and a statement of net income, if any. The petitioner argues legal justification for its refusal to furnish the names and addresses of the members of the N.A.A.C.P., which information is not required by the ordinance, but no justification appears for the refusal to furnish the above required information, much of which could not possibly involve the names of members. In fact, the only compliance by the Little Rock Branch of the N.A.A.C.P. with Ordinance No. 10,638 was by the *voluntary* submission of certain information to the Acting City Clerk by Rev. J. C. Crenchaw, President, Little Rock Branch, N.A.A.C.P. (R.25,26,27,28).

This letter stated that information had been requested from several organizations pursuant to Ordinance No. 10,638 and forthwith began to wrongfully characterize said ordinance as one requiring the names and addresses

of its members. All of this information, the N.A.A.C.P. voluntarily submitted. Further, there was no testimony admitted in evidence by the trial court in the Little Rock Case that said ordinance had, in fact, a deterrent effect upon the members of the Little Rock Branch of the N.A.A.C.P.

SUMMARY OF ARGUMENT

Petitioner was convicted and fined for violating a municipal ordinance by refusing to furnish a financial statement of the local municipal branch of the NAACP showing an itemized account of all receipts and disbursements, including the source and disposition by name and date, together with the net income, if any, of such organization. This information was required for the purpose of determining if Petitioner's organization should be taxed, but required only after the voluntary submission of a part of the information by Petitioner before same had been required as provided by the ordinance. Petitioner further aided the City in making its case by stipulating to facts sufficient to constitute the crime charged.

Petitioner at the outset of its communication with the City insisted upon characterizing the ordinance as one requiring the names and addresses of its members in an effort to square the facts of this case with *NAACP* v. *Alabama*, 357 U.S. 449.

The fact remains that the ordinance in question does not purport to require the names and addresses of members, but the names of persons financing the organization and the names of persons to whom funds are disbursed and the dates thereof. This is not the same requirement.

The ordinance in question is a valid exercise of State power, not in conflict with the Federal Constitution but recognized in the Tenth Amendment thereto. Petitioner

has not shown that this particular state action, general in its form and applied uniformly to other similar organizations, has in fact deterred the freedoms of speech and association of the NAACP.

The ordinance in question does not require that the names of the members of the NAACP or any other organization be open to public inspection, but only that such information be available to interested parties. This in itself removes the alleged restraint on freedom of association. But even if the ordinance is construed to provide for public inspection of names, such a procedure has been upheld on numerous occasions by this court where incident to the lawful exercise of the federal or state government's investigatory or tax powers. The Internal Revenue Code applied to a person's national citizenship, that citizenship protected by the First Amendment from federal action and applied to State action by the Fourteenth Amendment, provides ample precedent for such a requirement.

Assuming *arguendo* that there is in fact a deterrent effect upon Petitioner's freedom of association, the state has controlling justification for the alleged deterrent effect in its interest to preserve itself through reasonable exercise of its investigatory and tax powers. And such state interest far outweighs the fear of restraint expressed by Petitioner.

In any event, and in the alternative, the conviction of Petitioner must be sustained on the grounds that she failed to comply with other lawful requirements of the ordinance in question, it being expressly made severable. This unless respondent is required by the Federal Constitution to maintain one set of standards for Petitioner and another for its remaining citizens. Otherwise, the Federal Constitution is being construed to give Petitioner privileges and immunities not enjoyed by admittedly benevolent, charitable and non-profit organizations.

ARGUMENT

I

The Question is Broader Than That in NAACP v. Alabama, Names and Addresses of Members Are Not Required, and the Ordinance Is a Valid Exercise of State Power

Under Amendment 10 of the Federal Constitution, all powers not granted to the federal government are reserved to the states. This vast area of reserved powers includes the power to license, tax and regulate persons and associations in the conduct of their affairs, whether those affairs be for profit or not. Included within this power to tax, license and regulate is the power to define and classify activities which will be subject to taxation, or other regulation. Unless the classification is discriminatory, the power of the state to classify is paramount.

This court is not here concerned with the division of powers within the State, nor is it concerned with the method of exercising of those powers. If a subdivision of the state has exceeded the powers granted it by the state, then a question of state law rather than federal law arises. Thus, the question before this Court is whether the state has the power to enact an ordinance such as the one here in question, or by other methods obtain the information called for by the Ordinance.

Petitioner was convicted by the state courts of the State of Arkansas, for failure to supply the information required by Ordinance No. 10,638 of the City of Little Rock, Arkansas. Section E. of that ordinance, requires that an organization furnish a financial statement thereof including dues, fees, assessments and or contributions paid, by whom paid, and the date thereof, together with a state-

ment reflecting the disposition of such sums, to whom and when paid, together with the total net income of the organization. Petitioner alleges that the requirement that the names of members and contributors be disclosed to city officials bears no reasonable relationship to a lawful and effective exercise of the municipal taxing authority and that it constitutes an unwarranted interference with the exercise of Free Speech and association.

The ordinance in question states in its preamble that its purpose is to determine whether organizations within the City of Little Rock, which have been claiming immunity from a franchise tax because they are charitable organizations, are in fact exempt from the Privilege Tax (R.29).

The organization that Petitioner represents has no constitutional right to a tax exempt status merely because it may be a charitable organization. The tax exemption, if granted at all, is granted by the laws of the State of Arkansas, and not by the federal constitution. The State of Arkansas, or the City of Little Rock may tax all clubs, non-profit organizations, hospitals, fraternities and the like. The State may tax the mere existence of a corporation or an association. The State is not required to guarantee the continued existence of such organizations. As long as the tax does not discriminate under the federal constitution such taxed organization may not complain in this Court.

The grant of immunity from taxation given to charitable organizations by the City of Little Rock, or by the State of Arkansas, or indeed by any government having the power to tax, is ultimately based on a theory of *quid pro quo*. The charity, by doing useful work, relieves the state of a burden which it might otherwise have to assume. As a state has no interest in activities without its borders, the work of the charity must be done within the state, or

the state has received no benefit from it." If the charity is collecting money within the state, while operating under the protection of state law, and sends the money so collected to be spent outside the state, then the state is not receiving a benefit from the charity in exchange for the grant of tax immunity given the charity. The reason for the grant of immunity is gone. The North Little Rock Chapter of the NAACP sent $183.60 to the National Office out of receipts of $252.00, during the period January 1, 1957, to December 1, 1957 (R.41). Obviously, the City of North Little Rock did not get any benefit from the money shipped out of the City. It may be assumed that the Little Rock Chapter sent the same percentage of its income to the National Organization, although Petitioner refused Respondent such information (R.27). The local chapters are required to remit one-half of the net proceeds of each entertainment or fund raising effort to the National Office. The state is not foreclosed from investigating to determine how money is raised and spent by an organization engaged in the business of soliciting funds within the state. Indeed, the City of Little Rock, or the State can levy a privilege tax on or license the business of soliciting funds. *Thomas v. Collins*, 323 U.S. 516. And the State can not be bound by the self serving declaration of the tax payer that its funds are being disbursed for noble purposes, but should be allowed to investigate for itself the disposition of such funds.

Yet Petitioner insists that the case of *NAACP v. Alabama*, 357 U.S. 449, controls the decision in this case and states that it differs only in minor and insignificant particulars. Such is not founded on fact. There, the State was seeking to *enjoin* the NAACP *from conducting further activities* within the State. Here, the State is seeking information upon which to make a local tax determination. There, a Court Order was specifically directed

against the State NAACP Organization. Here, the ordinance is general in terms and applicable to all similar organizations without regard to race, color or creed. In the *NAACP* v. *Alabama* Case, *supra*, the court order required the submission to the court by the NAACP of the *names and addresses* of all of its *members* within the entire State while the purpose of the action was to determine if the association had failed to comply with the state statute requiring foreign corporations to file their corporate charters with the Secretary of State, etc. Here, the ordinance requires Petitioner to submit to the City Clerk a financial statement showing an itemized account of all *receipts and disbursements*, including the *source and disposition by name and date*, together with the net income of such organization for the purpose of determining whether or not such organization is engaged in a business for profit, and for the incidental purpose of verifying the information furnished. Obviously, these are significant and substantial distinctions.

Petitioner argues that this ordinance is an attempt on the part of city officials to liquidate the pressure for equal citizenship rights for Negroes by seeking to resist and turn back the momentum of our history. The fallaciousness of this argument is apparent from the letter addressed to the acting City Clerk of the City of Little Rock, Arkansas, by the president of the Little Rock Branch of the NAACP (R.25-28). In this letter, the NAACP stated that various city officials have requested information from several organizations in the City. This statement constitutes an admission that this ordinance has general application and that it has been applied without discrimination. The letter further states that the information contained therein is submitted *voluntarily*, but it continues by refusing to provide the detailed financial statement required by Section 2.E. of Ordinance No. 10,638.

This voluntary submission of information, all that was ever obtained, immediately characterizes the requirement that a benevolent or non-profit organization include in its financial statement the name of any persons, firm or corporation contributing to its support, as one requiring the names and addresses of the members of the NAACP. Such is not this case. The members may or may not be the sole source of income. In most such organizations they are not. Certainly there is no mention of their addresses. It is obvious that this characterization was made with the case of *N.A.A.C.P. v. Alabama, supra*, in mind.

While Respondent recognizes that federal privileges and immunities of every citizen are protected from state action by the Fourteenth Amendment, yet Respondent questions whether or not any group and in particular this Petitioner is entitled to preferential treatment in the application of this ordinance. As reflected in the record, said ordinance is and was being enforced uniformly and without discrimination. Otherwise, it would have been held invalid by the Supreme Court of the State of Arkansas. *Rebsamen Motor Co. v. Phillips*, 226 Ark. 146, 289 SW 2d 170.

Surely it is not contended that this ordinance is unconstitutional on its face. If at all, it is unconstitutional only as it has been applied. Yet here it is applied equally to all organizations. Can it be argued that an application of this ordinance to the Junior League denies its members their freedom of association? Their members are honored to stand up and be counted. The Federal Constitution does not require the State to have one set of laws for the NAACP and another for all other organizations! Certainly this is a different question than that presented to this Court in *N.A.A.C.P. v. Alabama, supra*.

This court, in *Bryant* v. *Zimmerman*, 278 U.S. 63, held on the facts that membership and the statutory requirement of the disclosure of the names of members in a secret oath bound association, the Ku Klux Klan, within a state was not a privilege arising out of United States citizenship and was, therefore, not entitled to protection of the privileges and immunities clause in the Fourteenth Amendment. The Court continued by stating that the liberty in this regard, like most other personal rights, must yield to the rightful exertion of the state's police power. The Petitioner seeks to avoid the effect of this decision on the basis that the NAACP is not a secret oath bound organization. Yet, there is no definition in the record of a secret oath bound organization. There is only the self serving declaration of Petitioner that the NAACP is not such an organization. The purposes and aims of the Ku Klux Klan are common knowledge in this country, but even if they were not and the secrecy and oath were eliminated, its purposes and aims remaining the same, there is no basis for distinction under the Federal Constitution between that organization and the one to which Petitioner belongs.

The word "secret" is defined as done, made, or conducted without the knowledge of others; or close-mouthed and reticent. Were this definition not applicable to Petitioner's organization, this case would not have arisen, for the Respondent would have the information upon which the tax status of Petitioner's organization could be determined.

The word "oath" is defined as any form of attestation by which a person signifies that he is bound in conscience to perform an act faithfully and truthfully. *Black's Law Dictionary*, (*4th Ed.* p. 1220). Regardless of the existence or non-existence of an oath requirement by the NAACP, no one can say that the NAACP does not con-

scientiously and faithfully perform its aims and purposes, as evidenced by the volume of litigation pursued by its staff of attorneys and "the major upheaval in the complex of Negro-white relations throughout the United States" so aptly expressed by Petitioner (P.B.10).

While this court in the *Bryant* v. *Zimmerman* Case, *supra*, correctly restricted its holding to the facts of the case before the Court, it is apparent that the true rationale of the case is that the freedom of association, as affected by disclosure of organizational membership lists to the state is not infinitely paramount, but is subject to reasonable state investigation and restraint. See *Uphaus* v. *Wyman*, 360 U.S. 72 (1959) and *Barenblatt* v. *United States*, 360 U.S. 109. This principle is recognized by this court in *NAACP* v. *Alabama*, *supra*, although it was found that Alabama had fallen short of showing a justification for the state court's requirement that the NAACP membership lists be produced, and therefore that the requirement was an unreasonable exercise of State power. Here, there is a reasonable exercise of state power.

In *Uphaus* v. *Wyman*, *supra*, a state demand for a list of guests at a summer camp was upheld by this court over the defendant's claim that the guests' freedom of assocation and right of privacy were being violated. The majority held that governmental interest in determining whether there were any "subversive" persons within the state outweighed the individual rights of association and privacy; which were tenuous at best. In so holding, this Court stated: "Certainly the investigatory power of the state need not be restricted until sufficient evidence of subversion is gathered to justify the institution of criminal proceedings." So here, the investigatory power of the State of Arkansas exercised through its political subdivision, the City of Little Rock, need not be restricted un-

til sufficient information is gathered to justify a tax determination.

II

Information Required Not Open to Public Inspection, Only to Interested Parties, But if It Were, Procedure Approved by this Court Where Incident to Exercise of Federal and State Investigatory and Tax Power

a. Information Not Open to Inspection Unless Interested Party

Petitioner has alleged that the information required by Ordinance No. 10,638 would be available to the general public. Section 4 provides:

> "All information obtained pursuant to this Ordinance shall be deemed public and subject to the inspection of any interested party at all reasonable business hours."

It was not decided by the Arkansas Supreme Court that the meaning of the words "interested party" included the merely curious, as well as those who might have an ulterior motive in seeking the information furnished to the City. The word "interested" may be defined as meaning "having the attention aroused, as an interested listener." It may also be defined as having a share or concern in some project; or being liable to be affected or prejudiced. This latter meaning is the one used in the laws of the State of Arkansas. Ark. Stat. Section 27-801 provides that every action must be brought in the name of the *real party in interest* . . . Section 27-806 provides: . . . A plaintiff or defendant need not be *interested* in obtaining or defending against all . . . Section 27-808 provides: Of the *parties* to the action, those who are united in *interest*, must be joined . . . Thus the term "interested party", or "party in interest" has a well defined usage in the statutes and law of the State of Arkansas. The construction placed by

petitioner upon the term as used in Ordinance No. 10,638 is not warranted. The fact that the information is to be "public" does not help Petitioner's construction. This can be construed to mean only that the information will be official, and in the possession of the proper authorities of the City of Little Rock. *Borah* v. *White County Bridge Commission*, 199 Fed. 213 (1952).

The construction of this portion of the Ordinance is one for the courts of the State of Arkansas. Petitioner could have obtained the construction of this paragraph by a suit in the courts of the State of Arkansas under Acts 1953, No. 274, ARK. STATS. 34-2501 *et seq.* Or relief could have been obtained by filing the information required by the Ordinance, and asking for an injunction against its disclosure to unauthorized persons. As Petitioner's main objection to the Ordinance seems to be the fact that the information might be disclosed to the public, it is submitted that the case should be returned to the Courts of the State of Arkansas for litigation on this point. *Bryan* v. *Austin*, 148 F. Supp. 63, vacated and remanded, 354 U.S. 933 and *NAACP* v. *Williams*, 359 U.S. 550, *NAACP* v. *Harrison*, 360 U.S. 167. Respondent does not concede that the fact that the information might be disclosed to the general public under Petitioner's construction of the Ordinance makes the Ordinance unconstitutional.

An "interested party" would be one who has given money to the organization or city officials engaging in the passing of tax ordinances or other regulatory measures. A person who gave money to the organization would be "interested" in determining whether or not the money he had given to the organization was accounted for. Any member of the organization would be "interested" in determining how the money was spent. A member of the general public, such as an employer of one of the contributors to the organization would not be an "interested

person" within the meaning of the Ordinance unless he had an official interest arising out of his connection with the state government.

b. Requirement of Inspection Is Incident to Lawful Exercise of Tax and Investigatory Power Resulting in Self Restraint

The federal income tax law exempts certain organizations from the payment of income tax on their incomes. Such organizations are generally those which are thought to render some public service, such as a charity, which entitles them to preferential treatment in the field of taxation. It is noted that the exemptions are granted; they are set out by statute. If it were not for the exemption granted by the statute, then they would be taxed along with other organizations having income. The 1954 Income Tax Code, and the Federal Tax Regulations provide that to obtain exempt status, the organization seeking such status must file proof that it is exempt from the tax under the code. Income Tax Code, 1954, Section 501, Federal Tax Regulations, 1959, Section 1.6033. Section 1.6033.(a) (5) (1) provides:

> "Every religious or apostolic association or corporation described in Section 501 (d) which is exempt from taxation under Section 501 (a) shall file a return on Form 1065 for each taxable year, stating specifically the items of gross income and deductions, and its taxable income. There shall be attached to the return as a part thereof a statement showing the name and address of each member of the association or corporation, and the amount of his distributive share of the taxable income of the association or corporation for such year."

Section 301.6104-1-a provides that:

> "any application for exemption, together with any supporting documents, filed by an organization described in Section 501 (c) or (d) of the Internal Revenue Code of 1954 . . . shall be open to public inspection on or after November 3, 1958, in accordance with Section 6104 (a) (1) and the provisions of this section, if the Commissioner or district director has determined, on the basis of such application, that such organization is exempt from taxation for any taxable year . . . Any information submitted which the Commissioner determines to relate to any trade secret, patent, process, style of work, or apparatus of the organization shall upon the request of the organization be withheld from public inspection, if the Commissioner determines that the disclosure of such information would adversely affect the organization."

A taxpayer in preparing his income tax return for the Federal Government is required to list the source of his income. Conceivably this might have the effect of discouraging the taxpayer from engaging in certain types of activity, such as larceny, or the sale of narcotics. The restraint imposed, however, is a restraint imposed by the taxpayer himself.

It is thus seen that the City of Little Rock has taken the same method as the Internal Revenue Service to insure that there is no evasion of the tax laws. By requiring public disclosure of the information presented by organizations claiming tax exemption, evasion of the tax is made difficult. It is assumed that members of the general public, seeing the information presented by the organization claiming tax exempt status, will come forward to the law enforcement officials, if they discover the information presented by the organization to be false. The public is entitled to know who is claiming exemption from the tax laws. *Hubbard* v. *Mellon*, 5 Fed. 764.

The wisdom of requiring disclosure is a matter for legislative concern. Disclosure for the sake of disclosure is not in all cases unreasonable. *Rumely* v. *United States*, 345 U.S. 41; *United States* v. *Harriss*, 347 U.S. 612. It has been applied in the Corrupt Practices Acts, which require political candidates to list the names and addresses of the persons, corporations or associations who have contributed toward the expenses of the campaign, together with the amounts that such persons, corporations or associations contributed, and the circumstances surrounding their contributions. Disclosure for the sake of disclosure is also utilized in statutes requiring that the persons paying for a political advertisement identify themselves by having their name appear on the political advertisement. ARK. STAT. 3-1412 and 3-1413, Title 2 U.S.C.A., Sections 241 *et seq.* This Court in *Burrows* v. *United States*, 65 2d 796, aff'd 290 U.S. 534, approved the federal statute requiring the disclosure of the names of political contributors. This Court stated:

> "Congress reached the conclusion that public disclosure of political contributions together with names of contributors and other details would tend to prevent the corrupt use of money to affect elections. The verity of this conclusion reasonably cannot be denied."

This Court recognizes that the requirement of disclosure might tend to restrain a person from making a contribution or might restrain a candidate for office from accepting such contribution.

Whatever the purpose of the Ordinance as stated in the preamble thereto the information required by the Ordinance could be used by the City to determine if known criminals supported the organization. If the information were given to the public, it would insure that the persons receiving funds for the organization turned over to the

organization the moneys so received. The person giving the money could determine if the money he had given had been accounted for. The method chosen by the City of Little Rock is much cheaper than to require a formal accounting in the state courts.

B

Respondent Has Controlling Justification Outweighing Alleged Deterrent Effect

In both *Bryant* v. *Zimmerman*, *supra*, and *Uphaus* v. *Wyman*, *supra*, this Court found that the state's interest was sufficient justification for any deterrent effect upon the rights of association and privacy involved. It is true that the evils of subversion and lawlessness may have a deadening effect upon the life of our government. But without taxes, and the necessary incident of the right to determine the object of taxation, no government can survive. That a group may join together, refuse the government information and label itself benevolent, charitable or non-profit and thereby avoid taxation is of no less import to the state's survival simply because it involves only a fraction of the total revenue than is the existence of one subversive or one lawless group. It is from these fractions that the whole is made. It is from the power to determine the legitimate objects of taxation and the enforcement thereof that lifegiving revenue flows. The inability of the state to verify at the source information furnished by a citizen subject to taxation undermines the entire tax structure and creates a hole through which tax dollars inevitably and ever increasingly flow. Such a result, petitioner urges upon this court. A more controlling justification for any alleged deterrent effect upon one of many local charitable, benevolent or non-profit organizations than the interest which this state has in the enforcement of this legislation cannot be found.

Public prejudice as claimed by petitioner does not alter the requirements of due process of law. *Moore* v. *Dempsey*, 261 U.S. 86 (1923). Nor does it justify the refusal of state officials and state citizens to comply with existing laws. See *Cooper* v. *Aaron*, 358 U.S. 1 (1958). Why then should public prejudice, fired by the laudable efforts of petitioner, justify exceptional application of an otherwise valid exercise of state power. As this Court faced in *United States* v. *Harriss*, *supra*, the hazard of a restraint on the freedoms of speech and association is too remote to require the striking down of the state's power to tax and a provision designed to enforce that power.

If making the names of contributors to the N.A.A.C.P. a matter of public record was deemed an appropriate means of securing the enforcement of the Ordinance in question and such provisions are plainly adapted to that end, then there can be no violation of constitutional guaranties as contended by Petitioner. See *Hubbard* v. *Mellon*, 5 F. 2d 764 (1925). And, as was held in the case of *United States* v. *Harriss*, *supra*, if any person who would otherwise become a contributor to the N.A.A.C.P. chooses not to do so because his name will become a part of the public record subject to the inspection of interested parties, such is a matter of self restraint.

Here, as in the *Hubbard Case*, *supra*, the argument is made that the availability of the required information to inspection has no substantial connection or relation to the collection of the tax. This Court answered that contention by quoting Chief Justice Marshall in *McCulloch* v. *Maryland*, 4 Wheat. 316, 421, 4 L.Ed. 579, as follows:

> "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, (and) which are plainly adapted to that end, (and) which are not prohibited, but (are

consistent) with the letter and spirit of the Constitution, are constitutional."

After quoting Chief Justice Marshall the Court held that public inspection of a list of names of income tax payers was considered by Congress as appropriate means of securing enforcement of the Income Tax Law and that such provisions were plainly adapted to that end.

This Court further held that while such provisions may cause many hardships and may prove injurious to many persons, and that it may later develop that Congress was unwise in the enactment thereof, still such considerations in no way affect the constitutional authority of Congress in the premises. The same rule should be applied in the case at bar. The governing body of the respondent determined that making the required information a public record subject to the inspection of interested parties an appropriate means whereby they could secure the enforcement of the Tax Ordinance in question. Such, it is earnestly submitted, is plainly adapted to that end.

Even adopting the version of the law most favorable to petitioner, the legislation under consideration can only violate the constitutional freedoms of speech and association if it in fact has a deterrent effect on such freedoms, and then only if your respondent has failed to show a controlling justification for that deterrent effect. *N.A.A.C.P. v. Alabama, supra.* A deterrent effect the petitioner has wholly failed to prove. There is absolutely no showing in the record that any alleged deterrent effect is attributable to the ordinance in question. There have been numerous acts of racial strife in this community in past months. This ordinance should not bear the weight of such conflict, neither should the existence of such conflict encourage this Court to invalidate an otherwise valid ordinance, nor should this court intervene on the basis of the motives

which spurred the exercise of this power. *Arizona* v. *California*, 283 U.S. 423, 455, and cases cited therein and *Barenblatt* v. *United States*, *supra*.

IV

In the Alternative, Ordinance in Question Is Severable and Conviction Must be Sustained on Other Grounds

Section 5 of the Ordinance under consideration expressly provides that any section or part thereof declared to be unconstitutional or void shall not affect the remaining sections of the ordinance, and to that end the sections or subsections thereof are declared to be severable (R.30).

In the event that this court finds Section 4 of Ordinance No. 10,638 making the information obtained thereunder a public record, or the requirement that the names of contributors be furnished in the financial statement, unconstitutional, which Respondent denies, then it is apparent that the remainder of the ordinance should be allowed to stand as a valid and legitimate exercise of the state's power to tax and to inquire if taxes are due.

Even if this Court finds that the petitioner can not be required to submit the source of income by name of the Little Rock Branch of NAACP, the conviction must be sustained because of the Petitioner's failure to furnish an itemization of the receipts and disbursements by date and a statement reflecting the disposition of said receipts.

CONCLUSION

Wherefore, for the reasons hereinabove stated, Respondent submits that the conviction and sentence here involved should be affirmed.

Respectfully sumbitted,

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CERTIFICATE OF SERVICE

We hereby certify that copies of the foregoing brief have been served by depositing the same in a United States mail box, with first-class postage prepaid, to the following counsel of record:

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Dated: Oct. 15, 1959